

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 133.

EVENING SESSION.

Thursday Evening, Sept. 20, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Capitol, Albany, N. Y., Thursday, Sept. 20, at 8 p. m.

Second Vice-President Steele called the Convention to order.

Mr. Cookinham—Mr. President, I ask consent to offer two resolutions.

The President pro tem—The secretary will read the resolutions.

The secretary read the resolutions as follows:

Resolved, That a committee consisting of ten delegates be appointed by the President to draft an address to the people of the State, explanatory of the proposed constitutional amendments to be submitted to the popular vote, and that the President be ex officio chairman of such committee; also,

Resolved, That the Convention adjourn sine die on Saturday, September 22, at 12 o'clock noon, or as soon thereafter on that day as the Constitutional amendments then adopted can be read and the revised Constitution read, adopted as a whole, and signed by the delegates.

Mr. Cookinham—I ask that these resolutions lie on the table.

Mr. Moore—Mr. President, I desire to debate both of those resolutions.

Mr. Springweller—Mr. President, I offer the following resolution:

The President pro tem—The secretary will read Mr. Springweller's resolution.

The secretary read the resolution of Mr. Springweller as follows:

Whereas, The wage-workers of this State have petitioned this Convention, through many thousand citizens, to pass the co-employe liability, anti-conspiracy and anti-trust amendments; therefore be it

Resolved, That this Convention will not adjourn without considering these requests and passing of said amendments.

Mr. I. Sam Johnson—Mr. President, a point of order. These resolutions refer to the business of this day and every other day, as the President of this Convention has often ruled, and I think we ought to consider them the moment they are put in here.

Mr. McMillan—Mr. President, I ask for a roll-call to ascertain whether there is a quorum or not.

The secretary called the roll, and it was announced that ninety-six members were present.

Mr. Tekulsky—Mr. President, I would like to offer the following resolution.

Mr. Spencer—I rise to a point of order. We are by a vote of the Convention in the order of third reading of bills, and as I understand it we cannot depart from that order of reading while there is any work before the Convention, without a vote of the Convention.

The President pro tem—The Chair will state that it has been the custom to allow a few moments for the ordinary business of the Convention at each session.

Mr. Spencer—But, Mr. President, some of these resolutions may call out debate and may consume the whole session.

The President pro tem—The resolutions giving rise to debate go over, and, therefore, they cannot call out discussion.

The secretary read Mr. Tekulsky's resolution as follows:

Resolved, That we extend this evening session to eleven o'clock, and after disposing of the printed calendar on third reading of bills numbers 26, 27, 28 and 29 we return to general order number 48, which is the first on the calendar, before transacting any other business.

The President pro tem—This resolution is strictly in order at this time.

Mr. Tekulsky—Mr. President, I desire that the Convention shall understand the reasons why I offer this resolution. Last week Mr. Hedges offered a resolution that we adjourn on Saturday until Thursday next, and debate arose at the time in reference to the adjournment. The question was asked, and it was stated by Mr. Hedges and by Mr. Root and others, that the motion for adjournment was offered in good faith, that they intended to return here and transact the business that was before the house. They not only said they would transact that business, but they laid out a plan of action, naming certain bills which would be acted upon. They have not done that, but the leaders have entered into a contract or some scheme or other to protect the thieves and gamblers of the State of New York; and when they reach that measure in reference to the gambling act, the gentleman then moves to go into the order of third reading. Now, Mr. President, I don't offer this for buncomb, I offer it in good faith. If the gentlemen, or any of the gamblers that he represents, can name me one man in the State of New York that is in the book-making business that is not a thief, a blackguard or an ex-convict, I will withdraw my resolution. I say, Mr. President, every bookmaker in the State of New York, no matter where he comes from, is nothing else but an ex-convict, a cracksman, a pick-pocket, a thief of the lowest character, and these men come here and desire to shut this out because the Legislature of a few years ago legalized a certain kind of gambling, and they are trying to protect them. Protect who? The king of the Louisiana lottery, Mr. Morris, the head of the association, who has come here to this State to control legislation so as to

embody the lottery law here once more. Why doesn't the gentleman, or some gentleman on this floor representing the gamblers, offer a resolution striking out the word "lottery;" that is what I want to know. They have been circulating around here that this is a quarrel between two sets of gamblers; that I represent one set of gamblers and Mr. Bowers represents the other. (Laughter.) Granted that that is so, Mr. President; then if thieves fall out, honest men get their dues. (Applause and laughter.)

Now I say, Mr. President, that everything I say here is the absolute truth, and let any man on the floor of this Convention name one book-maker in the State of New York that is not what I brand them to be, a crook, a loafer, a man who never travels in respectable society and never was known to do so. The lowest classes of people are in the business; and then they want to shut it out here in this Convention by some combination. It wouldn't take one hour to give that bill a consideration. Why is it that they shut it off this morning? There must be a reason for it, and I demand that the ayes and noes be taken upon that resolution, and let us put those who are in favor of the gamblers upon record.

Mr. Cookinham—Mr. President, I understand perfectly well that this bill is a fight between two sets of gamblers. I understand, also, that good men generally favor the amendment. I am in favor of the amendment because I believe that it tends to cripple gambling. But I do not believe that this amendment is more important than all the amendments now on the order of third reading. I do not believe that it is more important to adopt this amendment than it is to adopt the Constitution. I do not believe that the delegates in this Convention will come back here after this week. I have no idea that eighty-eight delegates will appear here after Saturday night next. I do say now, that after the amendments that are on the order of third reading are disposed of, I will vote for this amendment, though I believe it to be advocated by a set of gamblers in the city against the gamblers in the country. But I believe it is in the interest of good government, but not until the amendments now upon the order of third reading are finally adopted, that they may pass to the revision committee, that that committee may be

prepared to report to this Convention upon Saturday morning a revised and completed Constitution that we may finally adopt it as a whole and sign it; not until that material is in the hands of the revision committee will I vote to consider any other amendment. And I will say more, Mr. President. It has been charged by the gentleman who addressed the Convention that some one desired to advance amendments. I have asked to advance no amendment. There are those now on general orders that I very much desire to have taken up, and although I have been in a position where I might have advanced them had I seen fit, I have advanced not one single amendment that I have been specially interested in. The very last one upon the calendar is one that I am interested in, and I have taken especial pains to advance those that I was not interested in, that it might not be charged to me, because I was in such a position, that I had taken advantage of that position to advance an amendment that I desired to see adopted. I hope, Mr. President, that this resolution will be tabled or voted down, and that we may pass the amendments now upon third reading and complete them before we go into general orders again. I move to lay the resolution on the table, and upon that I move the previous question.

Mr. Dickey—Mr. President, I ask the gentleman to withdraw that motion so that the other side may be heard after he has been fully heard.

The President—The chair has but one course open to him, and that is to leave the matter to the Convention.

The President pro tem put the question on whether the main question shall now be put, and it was determined in the negative.

Mr. Dickey—Mr. President, if we adjourn this Convention—

Mr. Dean—Mr. President, I rise to a point of order. The motion to lay on the table is not debatable.

Mr. C. B. McLaughlin—Mr. President, I move to lay the motion on the table.

The President pro tem—The question before the Convention is upon Mr. Cookinham's motion to lay Mr. Tekulsky's resolution upon the table.

Mr. McClure—Mr. President, a point of order. Mr. Cookinham's motion was for the previous question. He intended to move the previous question,

and he made the motion to lay on the table and corrected it.

The President pro tem—The question is upon laying the resolution of Mr. Tekulsky upon the table.

The President pro tem put the question upon laying the resolution of Mr. Tekulsky upon the table, and it was determined in the negative by a rising vote.

The President pro tem—The question now recurs to the resolution of Mr. Tekulsky.

Mr. Dickey—Mr. President I rise to favor the resolution of Mr. Tekulsky. If this Convention should adjourn without taking some action upon this, one of the most important questions, if not the most important, that will be brought before the Convention or has been brought before it, I will hide my head with shame; and I know that the make-up of this Convention is such that it will not permit this and other propositions yet unacted upon to be side-tracked by any such subterfuge or excuse as the gentleman from Oneida has given here. When Mr. Cookinham the other day made a motion as to the order of business, he was asked whether it was the intention to give a hearing to this anti-gambling proposition and other propositions, and he said it was; that there was no intention on his part or upon the part of those who were supporting him to prevent the hearing—

Mr. Cookinham—Mr. President, will the gentleman allow me to ask him a question?—isn't he mistaken? Wasn't it General Hedges that made that statement?

Mr. Dickey—No, it was you. I know you—and, Mr. President, instead of living up to that promise, he comes here with a motion to lay on the table, and the previous question, and he seeks to shut us off from any hearing of these lottery propositions or this anti-gambling proposition. Such a course is entirely despicable, I don't care who introduces it or who his backers are. This matter of gambling needs our attention. It is a very serious matter. I have before me a hand bill of a Long Island Jockey club which advertises ten races each day, racing by electric light. They are not satisfied with racing in the broad sunlight, but they are going to begin racing in the night. The gambling mania has extended so far that they provide places for women to buy

pools and engage in gambling operations; and in the face of all this gambling business, which is ruining multitudes of our young men, our brightest and our best, when this curse is overspreading our State, and blighting many otherwise happy homes, Mr. Cookinham gets up here and says it is of little consequence, that we must go on and pass the civil service reform matter to third reading; that that is important; that we shall make an address to the people commending our work, and then adjourn and go home. Now, I take it that this Convention will do nothing of the kind. There are brave, honest, fair men here, a majority of this Convention, who are willing that every matter that has been reported from a committee shall have a chance to be heard, and be determined whether it is carried or not. And anybody who is afraid to go upon record on any of these measures, let him take his carpet bag and go home; there are enough of us here who are willing to stay and vote one way or the other. I hope Mr. Tekulsky's motion as a start will be carried, and then when it comes to the other propositions, that of Mr. Springweiler, that he will get support enough so that he and his associates and the thousands of backers of these labor delegates shall not be turned out of this Convention without a decent and respectful hearing.

Mr. Cookinham—Mr. President, I desire to make a correction. When I presented the resolution fixing the order of business, no gentleman asked me a question. I made no reply of any kind whatever, and Colonel Dickey is entirely mistaken. He has me in his mind in the place of some other gentleman. I desire to have this distinctly understood; and I challenge him to examine the record. He will find that he is entirely mistaken. No question was put to me and I made no answer.

Mr. Dickey—Your intention was then, a week ago, to side-track these propositions?

Mr. Cookinham—I simply arose to make that correction. I had no intention of side-tracking any amendment.

Mr. C. B. McLaughlin—Mr. President, my intention is to side-track this measure, and to meet it here or any other place I can; and I am surprised that so good a lawyer as the gentleman from Newburg should, on this

floor or any other place, advocate putting into the Constitution of this State, just exactly what the Legislature of the State now or for the last year has had the right to do. We are not here to decide or to legislate between two sets of gamblers, or any other class of people. I would like to ask the gentleman a question, if the Legislature of this State cannot now pass an act to prohibit gambling. They have done it in the past, and why does he stand here and advocate putting it into the Constitution of this State when the Legislature of the State—

Mr. Tekulsky—Does the gentleman want me to answer that question?

Mr. McLaughlin—Yes, sir.

Mr. Tekulsky—Mr. President, I desire to state that the Legislature has passed an act legalizing gambling, and for five years we have tried to take it off from the statute books, and it has been impossible.

Mr. McLaughlin—I thank the gentleman for his answer. The legalizing of the gambling to which he refers has been to drive the bucket shops from every city in the State, and the reason why this proposition is sought to be engrafted into the Constitution is so that gambling, if it is driven out of the city and confined to race tracks, that they won't drive it from there. It is simply in the interest of one class of gamblers against another, and the gentleman from Newburgh, Mr. Dickey, while he stands here to-night advocating that the delegates in this Convention should stay here until the snow flies, if you please, to settle a question which the Legislature now has the right to pass upon, is one of the very men who have stood here all summer and fought every single measure to prolong the sessions, to sit six days in the week, and three sessions a day. Now, I, for one, want to finish up the work of this Convention, and I propose, so far as I am able, to go to work and finish the measures we have had, and what the Legislature has now the power to do, to commit to the Legislature. I would like to have Mr. Dickey tell us why he is not willing to commit this matter to the Legislature, instead of keeping here this body of delegates to pass upon a measure which the Legislature has ample power now to do?

Mr. Storm—Mr. President, this is a repetition of what we have had time and again. We have spent half an

hour trying this case, if you please, whereas I begged, this morning, for only half an hour to dispose of the whole amendment. Now, I will try and be brief. It has been stated here that this amendment represents one set of gamblers as against the other. I will state that I am very much interested in this amendment; it is the outcome of one that I presented. Whatever Mr. Tekulsky's aim may be, I know not. My representation is of a respectable set of people. I only asked for half an hour before, and I only ask for half an hour now, to have this amendment disposed of; but it will not be granted. Why not? If you want to kill it, kill it; but let us have it before the Convention and let it die a natural death, and not be smothered to death.

Mr. I. Sam Johnson—Mr. President, I am in favor of the resolution offered by Mr. Tekulsky; but I would like to have added to it, and I hope there will be before we get through, that not only shall we go into committee of the whole upon this proposition, but upon other propositions that are upon the calendar of general orders, and dispose of them. I am not afraid to say that the gentlemen who are here will come back, and if they are not cowards they will come back. We have the power, and it is our duty to exercise it, and if twelve men will come back here and attempt to do their duty, they will see that the balance of them come back. The power is placed in our hands to see that men come here and do their duty, and do not, as soon as their ten dollars a day ceases, sneak off to their homes and refuse to do their duty at all.

Now, sir, there are many amendments upon this calendar that the committees have spent all the months that we have been here considering, and have finally prepared one from the mass that has been before them, that they think ought to be considered in this body, and now we find that what we have suspected for weeks is true, that there is an intention to pass the pet schemes of a few men, and then strangle all the others. I want to know if it was for this purpose that nine days were allowed for discussing a single proposition, six or seven days of that after a resolution was upon the records of this body asking that a time limit be fixed. I say, Mr. President, that the people sent the delegates here to perform their duty, not as to four or five propositions, but

as to the various propositions that should be brought before the house. They have been brought here, we have a right to have them heard, and when these gentlemen have seen fit to go to work and make up a programme, have they asked the men who introduced the measures whether they would be satisfied, or have they consulted with us as to whether we would be satisfied to have them buried or not? In hardly a single instance. If you want to bury our measures, sir, ask us to the funeral.

Now, sir, there are not only these propositions that have been mentioned here, but there are many others; and, for one, I say that I am willing to stay here and consider them, and every one of them, until it gets so late that we cannot submit them to the people. Weeks and weeks ago a resolution was offered in this body by a distinguished gentleman, asking the judiciary committee to make a report as to the latest time at which we could properly submit amendments. That matter has been buried somewhere, it has not been considered or reported to this body, and we have no information from them. And now, sir, I insist that we shall come here to-morrow morning, that we shall go into general orders, that we shall consider them, and when we get a sufficient number that we go into third reading and do our duty, and I shall not be content unless you do it, and I do not believe the delegates here will be content. I know that the people at home will never be satisfied with any such proposition as you are making. You may ask, sir, to present to the people an address, but I would like to know what kind of an address you are going to present to them as an excuse for sneaking away from your duty. We have done some things, we have passed the judiciary article, which increases the number of judges by thirty; we have passed an apportionment article, which increases the representatives here by forty. We have passed bills in reference to commissions, and we have said nothing about the amount or the number, or the expense they shall be to us; and now we say with that we will go home and explain it to the people. I do not believe there is any explanation that will satisfy the people if we do this.

Mr. Dean—Mr. President, I am inclined to think that this serio comic convention ought to adopt this propo-

sition of Mr. Tekulsky's. We have run the gauntlet almost of moral reforms.

Mr. E. R. Brown—Mr. President, I rise to a point of order. It seems to me that the gentleman's language is unparliamentary.

The President pro tempore—The Chair has not discovered anything unparliamentary in it.

Mr. Dean—Mr. President, I think that in addition to what Mr. Tekulsky has suggested in the way of reforming the morals of the State of New York, that some gentleman should get up enterprise enough to introduce the ten commandments here, with a penal attachment to each one of the sections. I therefore move the previous question on this resolution.

The President pro tempore put the question on whether the main question shall now be put, and it was determined in the affirmative by a rising vote—ayes 58, noes 44.

Mr. Dickey—Mr. President, I call for the ayes and noes on Mr. Tekulsky's resolution.

The President pro tempore—Under the new rule the ayes and noes cannot be taken upon this question.

The secretary again read Mr. Tekulsky's resolution.

Mr. Powell—Mr. President, I rise to a question of information. Do I understand the chair to rule that we cannot call for the ayes and noes on this question.

The President pro tem—On this question the ayes and nays cannot be called for under the late rules reported by the committee on rules and adopted by this Convention.

Mr. Powell—I understand that that applied only to the previous question.

The President pro tem—It also related to the rules and order of business as it was adopted by the Convention a few days since.

Mr. Dickey—Mr. President, I call for a rising vote.

Mr. Cochran—Mr. President, as I understood the resolution, it provided that we should consider on the third reading orders Nos. 28 and 29?

Mr. Tekulsky—All that is on the calendar.

Mr. Cochran—Nos. 28 and 29 are not printed yet.

The President pro tem—If the Convention will allow the Chair to make a statement upon this matter, the

Chair would be pleased to do so. This resolution is precisely in the order in which the business would have been conducted if no resolution had been offered. In less time than has been taken to discuss this matter, the two-thirds readings would have been completed. Nos. 27, 28 and 29, not having been received from the printer, could not have been acted upon, and general orders would then have been the order of the Convention. The Convention has occupied three-quarters of an hour in discussing this resolution, which is precisely the order that would have been followed without any resolution. Now, the Convention understands the matter thoroughly, I hope.

The President pro tem put the question on Mr. Tekulsky's resolution, and it was determined in the negative, by a rising vote—ayes 50, noes 60.

The President pro tem—The third reading of bills is in order. The secretary will read the title of third reading, No. 26.

Mr. I. S. Johnson—Mr. President, I desire to make a motion in reference to a matter which has been upon third reading, and, I suppose, is there yet. I ask to take from the table the resolution of Mr. McMillan, by which the general order in reference to bribery was laid upon the table.

The President pro tem—The Chair must decide that the Convention, being in the order of third reading, cannot be further interrupted, the time devoted to resolutions having been passed and ample time having been given—three-quarters of an hour. If Mr. Johnson desires to make a motion, the Chair will submit it to the Convention as to whether they will entertain his motion or not.

Mr. Johnson—Then I ask unanimous consent that it be taken from the table. I ask to have it ordered to revision, and when it comes back from the house I wish to propose an amendment, which, I think, will be satisfactory.

Objection was made to the consideration of Mr. Johnson's motion.

The President pro tem—The secretary will read the title of the general order before the house.

The secretary read the title, as follows: "Proposed constitutional amendment to amend article 8 of the Constitution, by the addition of a new section."

Mr. Jesse Johnson—That is the article in reference to legislation for cities. It has been fully discussed here, and I deem that it would be a waste of time to at all debate it, at least on my part, this evening. I merely rise to call attention to the fact that the Convention is already familiar with it from previous debates.

(Mr. A. H. Green—Mr. President, I would like to be informed as to the meaning of the language in line 16, page 2: "The Legislature shall provide for a public notice and opportunity for a public hearing" before any action is taken thereon. That seems to be quite unintelligible. Does it mean before action of the Legislature thereon? I would like to understand what that means, if anybody can explain it.

I will go on a step further: "Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city." Now, suppose it relates to twelve cities. Six accept and six do not accept; then what becomes of it? If the gentleman can explain that, who is responsible for the thing, I should like to know it.

I should also like to know, on page 3, in regard to the indebtedness. I know it is the practice in the city of New York to pay revenue bonds out of the revenues of that city. There seems here to be implied a power to run temporary revenue bonds for at least five years, and that that shall not be counted as a part of the debt of the city within the ten per cent limitation. Why, in five years you might swamp a city by an indebtedness of that kind. Suppose a bill is passed within fourteen days. What becomes of it then? You have to give fifteen days' notice. That may be provided for in some other part of this bill. And I do not see the propriety of the language in the 12th, 13th and 14th lines. "In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof, concurrently, shall act for such city as to such bill." Now, I do not see why the legislative body in the city of New York should not be treated with equal courtesy to the legislative body in other cities. We hope to have, though we have not entirely what we should like as a legislative body to-day, to have it by and by, and I think the legislative body of

the city should have some voice in determining what is an acceptable amendment to that city. Now, there are these four or five propositions that suggest themselves to my mind that I would like to have explained. There is a confusion about them that I am quite unable to clear up.

Mr. Jesse Johnson—Mr. President, the question which was put in relation to public notice, page 2, line 16, it seems to me is answered by the very letter of the proposed amendment. The action which is there referred to is the action of the city, which is provided for immediately preceding; and by all rules of construction, it obviously refers to that which precedes. In reference to the consent of the city being given in cities like New York, by the common council, I had supposed it was agreed that in the city of New York particularly, which my friend represents, it would be a great innovation to take that common council at once into the control of the city, which this might do. Therefore, as to the larger cities, where the common council have a very little part in the government, it is provided that the mayor shall approve or disapprove these bills in their way of passage; and it is further provided that at the proper time, when a common council is established and organized to bear such a burden of government, they may be brought in in order to give their advice to the Legislature on these bills. That, sir, is the reason why the distinction is made. It is a matter of advice, practically, from the city to the Legislature; and we wish the advice from the best and most authoritative source in the city.

Mr. Banks offered an amendment which was read by the secretary in the language following:

Section 11 of article 8 of the Constitution is hereby amended so as to read as follows:

Section 22. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in or bonds of any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such

county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate, subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. [All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city (if there shall be any such debt) shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for

county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.]

Mr. Banks—Mr. President, the other evening in presenting this amendment, toward the close of the session, to facilitate the passing of the amendment, I said to the secretary that merely the matter in brackets should be read. Unfortunately it was taken down, and, with the matter in brackets, was placed in such a position that it did not make good sense of the amendment. This amendment passed through our cities committee with a perfectly unanimous vote. So now I bring it up in the way in which it should be presented. I know there is no objection to it, and I trust the amendment will be referred back to the cities committee with instructions to report forthwith.

Mr. McClure—Mr. President, on the proposition which the amendment generally contains, I find that there is nothing offered to the people worth their acceptance. This pretended, this alleged, proposition which was to give home rule to cities, amounts, so far as my examination of it is concerned, to nothing. It provides, and we may as well look at it clearly and carefully and not be deceived, and not be parties to the deception of the people, by the pretense that there is anything of moment or of value offered by this amendment whatever—the proposition simply is that by a formal means the mayor of a city shall be apprised of legislation that is pending before the Legislature, and that if the mayor disapproves of it, the legislation shall recite, before it is passed a second time, that it is to be passed without his approval. Now, Mr. President, any one who knows anything about the course of legislation in this State, knows that for a number of years past the mayor of the city of New York and the municipal authorities of that city, have been represented before the Legislature by one of the assistants of the corporation counsel, and no measure respecting the city of New York has been allowed to proceed out of a committee room unless it has been made known to that

committee whether or not the mayor of the city of New York or his associates in his administration of the affairs of that city did or did not approve of the measure. It is very well known that an efficient, intelligent, well-informed representative of the corporation counsel's office has, for at least a dozen years past, attended the sessions of the Legislature and made known his views—I will not say the wishes, because the officials of the city dictate to the Legislature what should or should not be done—but the views of those officials have been made known to committees of the Legislature and to the Legislature itself. Formal communications have been addressed to the Legislature, which have been read upon the occasion of the production and passage of bills affecting affairs in the city of New York. Now, it is attempted to be said to the people that because a more formal notice than has heretofore been given is to be given to the mayor and aldermen of a city, that there is some home rule contained in this proposed amendment. And, then, this amendment proposes, Mr. President, that after the mayor of a great city like New York or Brooklyn shall have said formally to the Legislature that he disapproves of a measure proposed, that the Legislature shall then proceed to pass it by the same vote by which they were allowed to pass it originally. Why, it is a great deal like the veto power in the State of New Jersey. A partisan Legislature passes a partisan measure; it goes to the Governor; the Governor vetoes it; it goes back, and the Legislature, by the same vote that originally passed the measure, passes it over his head with a sort of contempt. Here we, after the mayor of a great city like the city of New York or the city of Brooklyn, shall have manifested in the most formal, pressing and convincing way his disapprobation of a measure before the Legislature, permit the Legislature to say, by the same vote as before, that it thinks little or nothing of his suggestions, and permit them to pass the bill. Why, only last winter, Mr. President, a matter of great concern to the city of New York, involving the expenditure of what was the interest on millions of dollars of the money of that city, was before the Legislature of this State. The mayor of the city of New York sent formal communications, and was represented before the committees to which the

matter was referred, by an astute, able, eloquent member of the corporation counsel's staff, and yet the Legislature, and by the vote which they were empowered to do it by, passed the bill. I cannot sit here, Mr. President, and in silence allow it to be assumed before the people by the going out of this proposed amendment that there is anything in the measure that is worthy of merit at all. I think it is a piece of absurdity to say to this Convention, and a like piece of absurdity for this Convention to say to the people of the State, that this great body sitting here in Convention assembled, one hundred and seventy members strong, cannot do any more practical work in the cause of home rule for cities, cannot do anything more for the protection of the rights and interests of cities, than to put into the form of a formal Constitutional amendment what I, with great respect to the chairman of the committee on cities, must say, to my mind, is mere trash. To have it recited in a formal act of the Legislature that a bill is passed by a majority vote, gentlemen; by a majority vote, notwithstanding that it bears upon its face a recital of the fact that it is opposed by the officials of the city to which it refers and which it affects. Now, that is all the home rule there is in it. It may be a species of home rule, Mr. President, that appeals to the applause and the favor of a partisan State Convention, but to men who are not actuated by a partisan spirit, to men who are sitting here with some sense of the obligations they owe to the people, to men who are expected to go back and explain what they have done, and the force and effect of it; I say that to men actuated by such a spirit there is nothing in this amendment that is worthy of the time spent in its passage. The idea of putting into a formal Constitution such trash as this, which might very well be a legislative act, a rule to be put aside at pleasure, but to put it as the basis of all of the law of the State, it seems to me that there is nothing in it. I protest in the name of the minority, I protest in behalf of a great city which I, in part, represent, against it being asserted here that there is any measure of home rule to any city in this amendment, and I hope it will be voted down.

The measure submitted by Mr. Banks is, as I understand it, now a part of the Constitution of the State, and the greater part of it is now the

law of this State, and embodied in its Constitution as it is at present in effect, and I hope the amendment, which is reported here from the cities committee, and which means nothing, and which pretends a great deal, like some other things that have passed through this Convention—mean nothing so far as the people are concerned, and their interests, and are mere pretenses, mere names, mere titles, like this bill, which was called home rule or something for cities—I hope that such amendments, and particularly this one, will not be adopted by the Convention.

Mr. Spencer—Mr. President, for the last three months this Convention is supposed to have been in travail with home rule, and I suppose that the natal hour has come. The situation, with this proposition before us, reminds me of an episode in the life of Queen Mary of England, as related at great length by Prescott in his life of her consort, King Philip II. of Spain. He tells us that after the marriage of those sovereigns, the court physicians excited great anticipations of the birth of an heir who should inherit the numerous thrones occupied by those monarchies. But when the natal day came the court physicians were compelled to confess that the suspicious omens which they had accepted were nothing more than the ridiculous symptoms of a case of dropsy. And it seems, sir, to me, that this proposition, which I suppose is destined to be born by this Convention within the hour, is composed only of stale wind and foul water. (Laughter.)

I had the pleasure of attending the Republican convention held this week at Saratoga, and I listened to the resolutions there adopted and to many of the speeches there made, and I found that they all agreed in extolling home rule and claiming the merit of favoring home rule for municipalities. I hope, sir, that no one will have the hardihood to claim that the proposition now before the Convention, coming from the committee on cities, contains anything like home rule. Encouraged by the sentiments expressed by that great and magnificent convention, I venture again to introduce the proposition which I asked the Convention at a previous session to pass; and I move, sir, that this proposition be sent back to the committee on cities, with instructions forthwith to strike out all of the provision from the first line to the seventh line thereof on page 3, and substitute the following,

which I send to the desk to have read. I do not care, sir, to discuss this question of home rule. It has been ably discussed, much more ably than I could, by gentlemen upon this floor, and the proposition which I submit is not a new one. I think many of the members here are familiar with it. It is substantially the same proposition that I presented and asked to have added to the provision in regard to the separation of elections, except this, that I have provided, in place of a majority vote of the electors of a city, that it shall require a three-fifths vote, and that thereupon the Legislature shall be required to grant home rule to the cities in regard to streets, highways, public places, parks and sewers, and the compensation of city officials and servants whose duties appertain to those subjects. I deem this, sir, as a very modest measure of home rule; I deem it, sir, as the slightest recognition that this Convention can pay to the sentiment which pervades this State upon this subject; and I protest against this Convention adopting a provision similar to this which is now before us and asking any one seriously to regard it as home rule. I believe, sir, in honesty in legislation, honesty and straightforwardness in a convention of this character, and, for one, I do not care to put myself on record as voting for a proposition of this character under the idea that it contains a single scintilla of home rule.

The secretary read the amendment offered by Mr. Spencer, in the language following:

“Whenever three-fifths of the electors of any city shall elect that such city shall exercise exclusive legislative and administrative powers concerning the streets, highways, parks, public places and sewers within said city, and the compensation of city officials and servants whose duties appertain to any of said subjects, the Legislature shall confer such power upon the mayor and common council of said city, and provide by law for the election and organization of such mayor and common council, in such manner and by such method as shall, in the judgment of the Legislature, conserve the rights of, and represent all, the people of such city, anything herein to the contrary notwithstanding. The Legislature may confer upon said mayor and common council such further powers of local legislation and administration as the Legislature may from time to time deem expedient.”

Mr. Jesse Johnson—Mr. President, the amendment which has just been presented by Mr. Spencer, as I have been able to gather, has much that would commend itself to my judgment. I think Mr. Spencer will concur with me that I was quite anxious to see a copy of it some time ago, in order that I might be able to look it over and further inform my judgment. I have not had any such copy, and as it is presented on the motion to strike out this section, and as it has never been printed, I see no alternative but to oppose it. A resolution of that character certainly should, in some form, be printed, before they should be asked to vote upon it. At least, it impresses me in that way.

Now, Mr. Chairman, in reference to the amendment offered by Mr. Banks, it is the same amendment that was offered by him when this amendment was in general orders, but by error in offering it only a part went up to the secretary, and so it was not printed in full. The part in italics in general order 60 was the only part which went into this amendment. His amendment merely supplies that. The only effect of that amendment is that it extends the ten per cent limitation on the debt capacity of cities, which is now applicable only to cities above one hundred thousand, to all cities, reserving, however, as heretofore, the right to go beyond that limitation for the supply of water, and making the further provision, which is very necessary for counties, for cities that absorb the counties, as Brooklyn is about to do, that the old county debt which was not within the limitation shall not be suddenly added. Were it added there we should be four or five millions beyond the limitation, because the limitation now is ten per cent city, ten per cent county, debt. When it all becomes one the fear is that they would be merged except for this provision.

Now, Mr. Chairman, with that I come to this main proposition. It is true, sir, that it has been in the thought of the people of this State for many years, has been the study of all persons interested in the municipal problem, to do something to elevate the character of the government of cities. I have before expressed to this convention the thought, which seems to me a certainty, that with the cities more than half, two-thirds of the population; that with the fact that that one city alone is one-third, and perhaps by consolidation a single city will have nearly

one-half, the members of the Assembly and Senate, the time has come when the cities govern the Legislature, and will do so; and it is futile, it is madness, to say that the cities can abandon self government and come here where they themselves control for the best expression of government. Something must be done. The committee on cities asked for more, and the minority members opposed it. We will not go over the debate. Many of the majority felt that it was surrendering something of the dignity, the sovereignty, of the State. Now, sir, here is a proposition that, in my judgment, will do very much, very much, to bring responsibility and better government to cities. What will it do? The gentleman from New York says that it will not do enough because it is a suspensatory and advisory veto. That is as far as this goes. Perhaps it is as far as it was wise that it should go. I am inclined to think that it is wiser and better than the original measure. But, sir, when I have the statement here that it is all the veto power that the State of New Jersey possesses in its State Executive, I think it is enough. It is very much. I was told, sir, by a member of the Senate of that State, since this Convention has been in session, that hardly ever was the veto of the Governor over-ridden in that State. It was not many years ago, sir, when that was the condition as to the Governor's veto in the State of Ohio—I am not certain but it is so now—though they could pass it over his veto by a majority vote. If I am not misinformed, while it takes a majority of each branch of Congress to pass a bill, two-thirds of a quorum, less than a majority, may pass it over the veto of the Executive. And I think, sir, under the Constitution of 1846, up to that time, that was the condition of the veto power in this State. Now this presents the suspensatory and advisory veto. It does something to bring the cities to the front, and to fix responsibility.

It will build up government there, it will ennoble citizenship and bring men with patriotic impulses to give thought and time to the city that they love; it will make it an entity, a specific thing, in the policy of the State. It will impress in the Constitution that the city is to be consulted, and if its advice is disregarded, forever after the measure passed in violation of that shall be labeled wherever it may go. Therefore, I say that something should be done,

and I earnestly hope that this measure of self government for cities, approved very largely by the press, suggested after much thought, which has received the concurrence of very many that have examined it, that this measure may not fail in this Constitutional Convention. Else nothing in this direction is done.

Mr. Spencer—Mr. President, I rise to a question of privilege. From the remarks of the chairman of the cities committee it might be inferred that I had shown discourtesy to him as chairman of the committee—

Mr. Johnson—I did not mean to imply any such thing, Mr. Spencer.

Mr. Spencer—I do not think that he intended any such inference to be drawn, although I believe it was necessarily drawn from his remarks. I will state, however, a matter that seems to have passed from his recollection. When I drew this provision I made quite a number of copies and handed them to various members of the Convention, including the chairman of the committee; and the copy which I delivered to Mr. Johnson, he returned to me, disapproving of it; and as he had disapproved of it once I did not deem it necessary to speak to him again about it. At the time that I presented it before to the Convention, he suggested that it would have been proper to make numerous typewritten copies so that many of the members might have examined them. The suggestion was no doubt a good one, but I always prefer to adopt my own course, and I never intended any discourtesy towards the gentleman. As chairman of the committee, of which I am a member, I wish it understood that I have stood loyally to him as our chairman, and do yet, so long as I felt that there was anything left for which we had, as a committee, contended.

Mr. Jesse Johnson—Mr. Chairman, I did not intend, I could not intend, to make any suggestion of discourtesy. The paper which the gentleman handed me I returned to him, supposing it was his only copy, and suggested typewritten copies. I merely said what I did to explain that, either through my fault or some miscarriage, I have never had a full opportunity to examine the measure. My friend is the very gem of courtesy, and, I feel, of absolute loyalty to all engagements and all obligations.

Mr. Mulqueen—Mr. President, as I understand the amendment proposed

by Mr. Spencer, it is to the effect that wherever in a city three-fifths of the electors thereof choose to give exclusive jurisdiction over certain subjects to the city, the Legislature should give such power to the city. Now, it seems to me, Mr. President, that this is some measure of home rule. The great failure of this Convention will be its refusal to give to the cities some measure of home rule. The chairman of the committee, and he seems to be the only member of the committee on cities who favors this mongrel proposition, states that it is necessary for us to create a certain pride among the citizens residing in our cities to the end that they will become more interested in our city government. Now, sir, what does home rule mean? It simply means that you must give to the locality the right to govern itself in purely local matters. We have pronounced here for separate elections in all cities containing more than fifty thousand inhabitants. I am informed by a member of the committee on cities that that change was made to accommodate the gentleman from Watertown (Mr. Brown), because he said: "If you have separate elections in my city, you will elect a Democratic mayor; but if you have an election for mayor at the same time that they elect State and national officers, we will have a Republican mayor." This, of course, characterizes this measure as legislating for Democrats in one section and Republicans in another. As a member of this Convention I hoped that its work would be approved by the people. I hate to think that this Convention will send out to the people a measure, such as this which we have here, and call it home rule. Why, as Mr. McClure has asked, what is it? Simply that a majority of the Legislature shall enact that the city of New York, for a given purpose, shall spend one, two or three million dollars. When the measure has been passed it will be presented to the mayor and the mayor may disapprove of it, and then it will come back to the Legislature and be passed by the same number of votes. Home rule? Where is the responsibility in that? The test of home rule is to have certain men make laws for the municipality, to the end that if they do not do their full duty the people of that municipality may punish them for it. You fix responsibility, but how do you fix responsibility when you leave it to the Legislature, by a majority vote, to pass measures affecting a certain locality.

How, if you please, can the people of the city of New York, or the people of the city of Brooklyn, punish a Legislature that passes laws which are against the interest of those municipalities? If you give to the municipalities the right to enact purely local matters, and the authorities of the locality should commit a grievous wrong, then the people of that locality may turn them out of office. Let me give the city of Brooklyn as an illustration. Last year, in the board of supervisors, there were fifteen Democrats and four Republicans. The people of that city disapproved of the action of the board of supervisors, and what was the result? This year we have fifteen Republicans and four Democrats, and so it would be in the city of New York, and in all the other cities of the State, if you fixed the responsibility upon the local authorities. But, sir, the Legislature can pass any law, no matter how inimical to the interests of the State, and yet the people of the locality will have no power whatever to punish those legislators. How could the city of New York ever reach the member from St. Lawrence, or the member from Tioga, for his vote upon some measure injurious to the city?

When this measure was up before, Mr. President, I proposed a substitute which would have given absolute home rule to the cities. The danger we suffer from in cities is the constant meddling of the Legislature in our affairs. Every reformer in the city of New York, every member of the good government clubs, clubs made up, as we all know, of an army of disinterested patriots, every one of whom thinks himself the very best man to fill every vacancy in the city of New York, even those men said: "You cannot have home rule, you cannot have good government in cities, unless you place absolute power within the hands of the municipal authorities." I hope, Mr. Chairman, no Democrat will vote for this proposition, because the chairman of this committee, and, as I say, he seems to stand alone for it, is anxious to have something passed, no matter what it may be, so long as it is labeled "home rule." If we pass it, the work of the committee upon this subject will become a shame and a disgrace. You, sir, were honest in your intentions in the beginning. You know as well as I that this is not home rule, that it does not give the municipalities any greater power than they have to-day; it does not fix the responsibility upon them. But you, in your desire to

have some bill passed, to have some measure in the Constitution, against, it seems, even the advice of the members of the majority on your committee, as well as those of the minority, have accepted this proposition, written, I am told, by a select few of this Convention; and now you declare that you have receded from all your protestations at the beginning for home rule for cities, and believe that this is a proper measure to give to the great cities of New York, Brooklyn and the other cities of the State, in the line of home rule for them and in the management of their own affairs. I hope, Mr. President, that the amendment of Mr. Spencer will be carried. It is some measure of home rule. It is not accessible to us; we don't understand it; it is so important, Mr. President, that I would ask the secretary to read it slowly and carefully to the end that every member of this Convention might take it down, and so, understanding it, vote intelligently upon it. I hope no vote will be cast against it simply because of the suggestion of the chairman, that it comes in at the eleventh hour. Though it be at the eleventh hour it will retrieve the work of this committee, which now is a failure, and will redound to the credit of this Convention if passed.

Mr. Nicoll—How much time is left, Mr. President, for this debate?

The President pro tem—Nine minutes.

Mr. Nicoll—Then I will be very brief, Mr. President, because there are a number of other gentlemen from cities who desire to be heard upon this subject. If there is any one subject that has been talked to death in this Convention it is this subject of home rule. It was talked for one week by the chairman of the committee on cities, and a number of us who were opposed to it talked another week. It was discussed again when his amended proposition came before the Convention; and when it came up upon the order of third reading the other night we all had a hack at it; and home rule in this Convention is dead; dead as a door nail, and not the efforts of Mr. Spencer, who is a warm advocate of the proposition of local self government for cities, or the eloquence of Mr. Mulqueen, can resurrect it. Nothing that I can say, I know, can help it along. I cannot galvanize a corpse. The only excuse that I have for speak-

ing at all upon the subject to-night is this. When this proposition came up upon the order of third reading, while I criticised it as a frivolous proposition, I did state that I intended to vote for it because it scented, I may say smelled, of home rule; and I was so much in favor of anything relating to home rule that I was going to vote for this proposition simply because it smelled of it. But since that time I have been down to the city of New York and I have conferred with all of those gentlemen who have had this cause of home rule and the better local government of their cities at heart for many years, who have been looking forward for the last decade to this Convention to give some measure of proper local self-government to the great municipalities of this State. I have been over this proposition, this last emanation of the chairman of the committee on cities, with them, and they have all agreed with me, or at least I have agreed with them, that this proposition is absurd, is ridiculous, is frivolous, is misleading, and that we ought to kick it out of this Convention as a spurious measure of home rule. There is nothing to it. It does not change the present situation. It simply puts into the Constitution the present practice with regard to measures relating to the special government of cities; and I have the honesty to confess to this Convention that I propose to change my mind and vote against it, because it amounts to nothing. We have had the chance—or at least you have had the chance—we have always been ready to accept your chance—of giving some measure of local self-government to cities. You are not doing it because you control the cities at the present time. Gentlemen from the rural districts now have a great opportunity. They come down from the county of Cattaraugus, of the county of Chautauqua, to the Legislature, and when they get there they have a great chance, because they have the cities of New York and Brooklyn to legislate about. They can get appointed to investigating committees and make a State reputation by investigating some of our departments. You will never give up that chance so long as you live. I never knew yet of a minority giving up the control of a majority, or of any man giving up a good thing when they had it. You have it, and you have made up your mind not to give it up; and I do not blame you

much. There is nothing left for us to do in the cities except to move out into the country, and after you have passed the apportionment measure, why, most of us will be willing to trade our houses for a farm—give a mortgage on them. Now, that is the perfectly honest and frank attitude that a member of the cities committee ought to take with regard to this home rule measure. For my own part, if this apportionment measure and this other cities measure should succeed, I am willing to swap my house on Thirty-eighth street for a farm in St. Lawrence or Cattaraugus, or the lonely Chautauqua, or the lonesome Wyoming, or any other of the interior sections of the State. I will become a trustee of the village of Arcade, like Mr. Sam Johnson, or any other place. I will go out of business as a resident of the city. I will be elected to the Legislature of this State from some of the rural districts, and I will take a hack myself at the government of cities. But that is the real situation. We might as well be honest in these closing hours of the Convention. I will go back to Long Island, I will represent the county of Queens in this Legislature, and I myself will be chairman of an investigating committee and show up one of the city departments in Brooklyn, and gain a great reputation as an investigator; or I will get my sisters, my cousins and my aunts, my nephews, uncles and brothers appointed on the various departments of the city government. I will take a slice of the fat contracts in Brooklyn, and I will make a handsome profit out of it all. Of course, you do not intend to give it up. What is the use of prolonging this debate? I have already spoken five minutes out of the nine, and now I will give way to some of the other eloquent gentlemen. (Laughter.)

Mr. I Sam Johnson—Mr. President—

The President pro tem—The hour for closing the debate has arrived. (Laughter.)

The President pro tem put the question on agreeing with the motion offered by Mr. Banks, to recommit the amendment to the committee with instructions to report forthwith as read by the secretary, and it was determined in the affirmative.

The secretary then read again the amendment proposed by Mr. Spencer.

The President pro tem put the question on agreeing to the amendment as read, and it was determined in the negative by a rising vote—32 to 52.

The President pro tem—The question now is upon the final passage of the proposed constitutional amendment as amended by Mr. Banks, which the secretary will read.

The secretary read the amendment as directed in the language following:

"Article eight of the constitution is amended by inserting the following as a new section:

"Section 12. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

"In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof, concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity of a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided by every such city. Whenever any such bill is accepted, as herein provided, it shall be subject, as

are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may, nevertheless, again be passed by both branches of the Legislature, and it shall then be subject, as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

"Section 11 of article 8 of the Constitution is hereby amended so as to read as follows:

"Sec. 22. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in or bonds of any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate, subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained,

in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. [All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city (if there shall be any such debt) shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt.] The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not, in the aggregate, exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Mr. Hotchkiss—Mr. President, there are two distinct propositions contained in this amendment, one of them affecting the so-called home rule of cities, and the other affecting an entirely distinct matter, to wit, the debt limitation of cities. The amendment affects two entirely different sections of the Constitution, and it is known by us all that—

The President pro tem—The gentleman is out of order. After the third reading of a proposition no debate can be permitted under any circumstances whatever.

Mr. Hotchkiss—I am calling the attention of the Convention to something. I want to move a division.

The President pro tem—No motion can be entertained.

Mr. Hotchkiss—I want to move a division of this question.

The President pro tem—A division cannot be made on third reading.

Mr. C. B. McLaughlin—I desire to move that the time be extended for thirty minutes.

The President pro tem—No motion of any kind can be entertained now.

Mr. Cochran—May I call the Chair's attention to the report of the committee on revision. I think that is all Mr. Hotchkiss desires to get at. It is to save us future trouble. The committee on revision made a special report, and say this latter part of the amendment is not applicable to the part to which it apparently relates.

Mr. Jesse Johnson—Mr. President, I call the gentleman to order.

The President pro tem put the question on the final passage of the amendment, and the secretary proceeded to call the roll.

Mr. Bowers—Mr. President, I desire to explain my vote. So far as the amendment of Mr. Banks' is concerned, if I could be given the opportunity of voting for it separately, I certainly should do so. It is a wise and an eminently proper amendment, one which ought to have been adopted by this Convention. So far as the rest of the bill is concerned, popularly spoken of as the home rule that this Convention proposes to offer to the cities of the State, I am bound to say that I consider it so great a farce that I cannot be put in the position of having voted in favor of a constitutional amendment which contains those clauses. It is worse than giving nothing, for it is a pretense by which the cities committee wishes to go before the public under the claim that at least their honored chairman has carried his purpose of giving to the cities of the State home rule. Under these circumstances, much as I regret that I am unable to cast my vote in favor of the amendment of Mr. Banks, I feel it my duty to vote, on the whole proposition, no.

Mr. Cochran—I desire to say, sir, in voting on this amendment, that I consider all but the last paragraph perfectly farcical; but the last paragraph is of such vital importance to the city of Brooklyn, in view of the annexation

of all the county towns, that I am compelled to vote aye. I vote aye.

Mr. Davenport—Mr. President, I desire to say in explanation of my vote, as a member of the committee on cities, that a more emasculated and enervated pulling never struggled from darkness into light than the first portion of this proposition. The latter part is an absolute necessity, in my judgment. Therefore, regarding the first as valueless, but too weak to influence the second, I vote aye.

Mr. Dean—Mr. President, the committee having conceded everything for which I contended on the eighth day of August, and in spite of the debt limitation which has been placed upon this as a rider, and which I believe to be entirely hostile to the best development of municipal government, I vote aye. (Laughter.)

Mr. Holcomb—Mr. President, I would like to explain my vote by saying that if I could have the privilege of voting for the proposition as presented by the gentleman from Albany, I would be very pleased to do so. Aside from that I consider the amendment as proposed to us to-night to be absolutely without merit, without character, without the least characteristic to commend it to this body or to any member of this body. It seems to me to begin nowhere and end nowhere. If a proposition be presented to the Legislature, and be passed, and come down to the city, and come back to the Governor after the adjournment of the Legislature, the legislation absolutely would fail, as I read the proposed amendment. Therefore, I believe that a hostile Legislature could defeat the proposition from beginning to end, without the slightest difficulty in the world. I consider it literally childish, meaning nothing. I vote no.

Mr. Hotchkiss—Mr. President, the situation in which we find ourselves to-night is the legitimate outcome of the situation which I pointed out to the Convention about a month ago. When this report from its cities committee on debt limitation and on the sale of city franchises first came in, I moved that they be made special orders, as the cities amendment, so-called, covering the subject of home rule, had been made. I was opposed in that motion by the chairman of the cities committee, and although there was a vote taken upon it, the majority in this body voted unanimously, almost to a

man, not to progress the amendment for the debt limitation of cities. As soon as the work of the Convention had progressed sufficiently to show that the amendment on debt limitation was buried unless it was forced to the front, Mr. Banks was allowed the opportunity, in order to get it before the Convention, to attach it here to this emasculated thing called home rule. Under those circumstances, I do not propose to be driven into voting for one because of my regard for the other. I vote no.

Mr. Hottenroth—I desire to explain my vote. If I could feel satisfied that the first portion of this amendment were perfectly harmless, I would vote for it in order to save the last portion of it, but, on the other hand, it seems to me that it is merely the lending of the consensus of opinion, at least of this Convention, to the hue and cry against hasty legislation. Now, it might seem at first blush that this would prevent hasty legislation, but if we consider it carefully, we have a proposition that matters relating to local affairs in cities shall be presented to the Legislature. They go through the form of being passed by a committee, then passed by the Assembly, then passed by the Senate, and finally they are sent to the mayor of the city. He has fifteen days within which to return them. Now, if that is bad legislation, it can be rushed through, and about that time the session will have nearly reached its end without a knowledge on the part of members of the whole import and effect of the legislation. It will prevent good legislation, and not only that, but it will shift the responsibility. The Legislature might well say, in the event of a mayor urging the passage of a bad measure and its being passed, "We were not responsible; you can hold your local authorities responsible." Now, if we are to have any authority, let us have it, but do not shift this responsibility from one to the other. But the main thing is the delay in legislation, the preventing of good legislation and the preventing of the carrying out of what the Convention set out to do, the removal of hasty legislation at the end of the session. I vote no.

Mr. Jenks—Mr. President, up to this moment I have, in my feeble way, done all in my power in the interest of home rule. I have made suggestions to the committee, I have supported the minor-

ity; I have voted on every amendment which really meant anything, but I can go no further. The gentleman (Mr. Jesse Johnson), the other night, called this the shirt of Nessus. I have examined it with some care, and instead of being the shirt of Nessus, there is not enough of it to make an average paper collar. It is weaker than Tupper's verse; it is milder than an old maid's cat; it is paler than a winter's moon; it is colorless as a whited sepulchre; it is meaningless as a platform plank; it is paresis; it is puerility; it is a childish platitude; it is a miasmatic vapor from a mass of meaningless mush. (Laughter.) It is sans eyes, sans teeth, sans hair, sans everything. The only merit it has was filched from the minority report of the committee on cities. All it does is to tell the Legislature to make haste slowly. If the mayor of the city be of a different faith from the Legislature, then the Legislature will pass the bill, because they will say he vetoed it on account of politics. If the mayor be of the same political faith as the Legislature, then the mayor is never going to veto it. It is all very well as a copy-book text; it is very pretty as a side-show; a child could play with it. It is as weak as circus lemonade; but when it is put before the people of this State as a solemn declaration of a Constitutional Convention, as a measure of home rule, I part with my friend, the chairman of the committee on cities, and cannot have my vote go upon record, or go to the people of this State, as if I had found something, casting aside party affiliations and party lines, that I could vote for on the ground that it was truly home rule. I vote no.

Mr. Jesse Johnson—Mr. President, methinks my ladies do protest too much that there is nothing in this. I remember, sir, that the progeny of a monster destroy one another. One protestant says: "I want the second section, but I cannot vote for the first;" and the next one says, "It is harmless," and they all agreed that, without any witicism or without any devouring of the dictionary for similes—they voted that there should be a halt of five days in passing a bill, to bring the city in. They do protest too much. It is the shirt of Nessus, and the collar clings. I vote aye.

Mr. McKinstry—Mr. President, I want to say a word in behalf of the counties referred to by my pleasant

friend, Mr. Nicoll. I want to say that the representatives of those counties are completely tired of having their time at Albany taken up with legislating for New York city and Brooklyn. Of course, when we first come to Albany, we are greeted by the Republicans of New York as saviours and rescuers of these great cities, and it is very pleasant. It is very pleasant to be called angels of purity and light and all that stands between those cities and destruction. I sometimes think that if in olden times they had had a Legislature and could have had members there from Chautauqua and Cattaraugus and Allegany, they might even have saved Sodom and Gomorrah; but when we come to the reality, sir, we find that these measures are simply to enable Republicans in New York and Brooklyn to obtain power and patronage and plunder that they cannot get in other ways, and our country members are tired of it. When I came to this Convention and heard the oft-quoted speech of our President, and the sentiment here for home rule, I was very much delighted on that account. I thought we were to be relieved of this trouble. I took early occasion to become acquainted with Mr. Johnson, and I will say that he impressed me as a man of absolute sincerity of purpose. He agreed with me, and I agreed with him, that it would be better for the Republican party in the long run to abandon this interference with the large cities. But now, when he brought in his bill, which really had a large measure of home rule, how was he met? Why, sir, the scene reminded me of one we have at our country fairs, where a darkey puts his head through a hole in a vertical blanket, and all the bystanders take a throw at that head for a nickel a throw. (Laughter.) It seems to me as if all the expert throwers in this Convention took a shy at Brother Johnson's head, and I do not wonder that after a while his heart broke and he gave it up. And the situation now reminds me of a family of children I once heard of, quarreling as to which was to have the wishbone of a Christmas turkey; and it soon became somewhat disagreeable to the man of the house. Finally he laid down his newspaper and said, "I will settle this dispute. We won't have any Christmas turkey this year; we will have bacon and liver." So I say that I think our

friends of the minority are largely to blame for this failure of home rule. They had the toothsome turkey of home rule within sight, but they made such a quarrel over it that they are now invited to a diet of bacon and liver. (Laughter.) I vote aye.

Mr. Morton—Mr. President, I have listened with close attention on various occasions to the attempts of a number of delegates to this Convention, who have purported to give their reasons why they were opposed to this article. I simply wish to say, as a matter of fact, founded in my own experience, and I feel that it is the experience of many of the delegates on the floor of this Convention, that several of the gentlemen who have addressed themselves to this subject have, in their official capacity in relation to the great cities of this State, entrenched themselves year after year in the halls of this Capitol as a sort of a third power, or a council of administration in the Legislature, and transferring themselves to the executive chamber, have, as to the action of the Legislature, acted absolutely as an additional branch of the legislative power of this State in matters respecting these cities. It is a fact known to many delegates of this Convention that the local departments of the great cities of New York and Brooklyn have been continuously, year after year, represented in these halls, and that they have used their power and their influence either for or against many measures touching the welfare of those cities, and that they have been uncommissioned counselors to the Legislature and to the executive of the State; and it is known that many measures—it is a matter of record, a matter of history, that many measures have been passed by the Legislature and approved of by the Governor that have proved disastrous to those cities. And, according to the statement of these gentlemen here, made repeatedly upon the floor of this Convention, they have claimed that the cities were represented, and yet that specious legislation when it was attacked was always disclaimed by the authorities of those cities, and the whole responsibility for the legislation thrown upon the Legislature. It has been done, sir, for many years, and I hold that if there were nothing else in this city article except this provision which remands the acts of the Legislature to the chief officer of the

cities for his approval or disapproval, that that article alone is worth a place in the Constitution and is deserving of the vote of every man who is really in favor of honest home rule for the cities of this State. I vote aye.

Mr. Powell—Mr. President, I came to this Convention with the sincere hope and the intense desire that we might incorporate into the Constitution of this State something that would give a large degree of home rule to our cities; and with that feeling actuating me I supported the original article that was brought in by the cities committee. To my surprise, from the minority, which has been crying about home rule and talking about home rule, there came only a captious opposition. First, we had the criticism of the language employed from a grammatical standpoint, and then we had a criticism of the language from a rhetorical standpoint; and then we had a comparison of the language with that of Macaulay's poems; and so we have gone on step by step, until finally the last objection that comes from the minority is that this is only a collar. Well, sir, it is the first time in my life that I ever heard a McLaughlin democrat from the city of Brooklyn make any objection to a collar; and I am led to think that my friend, whom I admire and love very much, has become a heretic, and that he has gone over body and soul, baggage and everything to the Shepard democracy. I congratulate him on his change; I congratulate him that he has got away from the wearing of a collar and aspires to the wearing of a shirt. (Laughter). I vote aye.

Mr. Barhite—Mr. President, I am not very particular about it, but I guess I will vote aye. (Laughter).

Mr. Becker—Mr. President, I voted in the cities committee for the original amendment, and supported it on the floor of this house. I know that no word was raised against what it contained by the minority until the police clause and the election clause were put into the amendment, and I know that from that time forward, the vituperation, misrepresentation, abuse and every other form of parliamentary obstruction that could possibly be devised and adopted, the minority have tried to defeat that amendment. Later on we found amongst our own friends some objection in view of the fact that the minority evidenced such an intent to keep the most valuable por-

tions as we regarded them, of that amendment out of the organic law. We saw fit, many of the majority did, to prevent the mayor from having the absolute power of veto and other matters. I am frank to say that I regret it. I stand in the same position in which I stood at the beginning, that in these purely business matters which are governed by this amendment the Legislature should have nothing to do except to permit the municipalities to act as they want to in regard thereto, and that the responsibility for doing or not doing should be solely with the municipal authorities. But it seems that we are not to have this. This is the best that we can get, owing to much fear that the great powers of the State of New York will lose their hold on the question of putting in a sewer, or paving a street, or paying a petty salary to some policeman. If that be so—it seems to be so—then I must take, as other gentlemen have here, for all legislation is a matter of compromise—the best thing that I can get. And I believe still that there is a great deal of good in this amendment. I have heard that one electric light is a better defense against thieves and burglars than twenty-five policemen; and I believe that the subjecting of measures which are proposed in the Legislature to the light of public examination and approval or disapproval by the press and by the people will at least do something in the line of home rule for cities, and therefore, I vote aye.

Mr. E. R. Brown—Mr. President, I appreciate, or think that I appreciate, the dilemma in which our Democratic friends find themselves to-night. When I came to this Convention I came quite uninformed in regard to the details at least of the proposed home rule which the gentlemen suggested. By prolonging the debate and by making objections to minor matters which were not exactly to their taste they afforded an opportunity to the rural gentlemen in this Convention to find out what their real purpose was. It is unfortunate for them that they should have so far prolonged the debate upon a police clause and upon other clauses that the members from the country should have become informed in regard to what their real purpose was. But I did not understand the bitterness of their disappointment until the gentleman from New York (Mr. Nicoll) com-

pared this bill to a manikin, saying that he had intended to have on Manhattan Island, a real live Indian sachem, uncontrolled by any legislative fetters. He has now to put up with a mere manikin. And the gentleman from Brooklyn (Mr. Jenks), spoke of the original bill, or of his idea of what the bill was to be, as some delightful after dinner dish which he was to attack as you would something with a trip hammer. He would get at it, devour it and make it his own. It was to be delicious food to him; and it is a great disappointment to him, Mr. President, that he should have been fed upon so moderate a meal. And the gentleman from New York (Mr. Hotchkiss), regretted that we did not give him bread instead of a stone; and I have come to the conclusion that it was bread he was seeking in seeking home rule here in this Convention. And finally, Mr. President, came the gentleman from New York (Mr. Bowers), who travels in the shadow of presidential interference, but who now regrets that he should have spent so much time upon the discussion of the police clause, and should not only have lost the three-fifths amendment which the President suggested, but should have been reduced to a plain majority. Now, Mr. President, in regard to this bill, it contains one vital point. It contains a check upon special legislation; but because it is not such a check as will prevent the interference of these gentlemen who believe that they are to be in control of local matters on Manhattan Island and in the county of Kings, it is not entirely to the taste of all of them. I vote aye.

Mr. McIntyre—Mr. President, this incident reminds me very much of Shakespeare's play, "Much Ado About Nothing." If I could have my way with this thing I would have it embalmed and surrounded with immortelles and hung upon the walls so that it could be preserved as a memento. But as the art of embalming has not really reached that state where it can make something out of nothing, I suppose the majority seem inclined to put this into the Constitution so that we can read it hereafter and endeavor to find among the six pages of solid matter something. The only value of the proposition is that we may be able to get a little information about legislation in the Legislature. It seems to me that does not pay for the trouble.

I think that it ought to be beaten, but out of respect for the man that has worked so hard for it I will vote aye.

Mr. Tekulsky—Mr. President, I desire to explain my vote. I am committed to home rule. I am in favor of home rule, always have been in favor of home rule, and one of the bills that I introduced in this Convention was a home rule measure. But owing to the fact that a deal has been entered into by the supposed leaders of the minority and the majority in order to protect the crooks and gamblers of the State of New York, I vote no.

The call of the roll having been completed, the following result appeared:

Ayes—Messrs. Abbott, Acker, Ackery, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A.; Brown, E. R.; Cady, Carter, Cassidy, Church, Clark, G. W.; Cochran, Cookinham, Cornwell, Countryman, Crosby, Davenport, Dean, Deterling, Dickey, Durfee, Emmet, Faber, Floyd, Foote, Francis, Frank, Andrew; Frank, Augustus; Fuller, C. A.; Fuller, O. A.; Galingier, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, M. H.; Holls, Jacobs, Johnson, I. Sam; Johnson, J.; Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H.; Lincoln, Manley, Mantanye, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Moore, Morton, Nichols, W. H.; Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root, Springweiler, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President—93.

Noes—Messrs. Blake, Bowers, Burr, Bush, Danforth, Deady, Deyo, Durnin, Farrell, Fitzgerald, Forbes, Giegerich, Goeller, Green, A. H.; Green, J. I.; Herzberg, A.; Holcomb, Hotchkiss, Hottenroth, Jenks, Maybee, McClure, McLaughlin, J. W.; Mereness, Mulqueen, Nicoll, De L.; Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Schumaker, Smith, Sullivan, W.; Tekulsky, Titus, Towns, Truax, C. H.; Truax, C. S.; Veeder, Williams—42.

Mr. C. B. McLaughlin—Mr. President, I desire to move that the time of this sitting be extended for fifteen minutes for the purpose of considering a resolution which I propose to offer looking to the final adjournment of this Convention.

President Choate resumed the chair.

The President—The question is upon Mr. McLaughlin's resolution.

Mr. Dickey—Mr. President, I make the point of order that the time having already expired, the motion cannot now be made.

The President—We have decided that point a great many times before. I hold that the Convention is master of its own movements as to extensions of time. Mr. McLaughlin's resolution is in order.

The President put the question on the adoption of the motion of Mr. McLaughlin to extend the time of the session for fifteen minutes, and it was determined in the affirmative.

Mr. McLaughlin—I offer the following resolution:

"Resolved, That the consideration of proposed amendments to the Constitution be terminated with the final disposition of bills heretofore ordered to a third reading, and that thereafter the Convention proceed to the consideration of such matters as are necessary for the final close and submission of the Convention work to the people."

Mr. McKinstry—Mr. President, I wish to debate the resolution and ask that it lie over under the rule.

The President—It seems to relate to the business immediately before the Convention, as it affects the present disposition of third readings and general orders.

Mr. Cochran—Mr. President, I am sure, sir, that I, for one, am as anxious to leave this Convention as any other delegate here, but I believe, sir, that there are a great many important amendments still undisposed of, and as I said the other night, when a similar resolution was offered, I feel that we would be negligent to the duties which have been imposed upon us as delegates to this Convention if we adjourn one day before we consider everything which was properly before us. I, sir, have only one amendment on this calendar, and in that I have no personal interest whatever. But, sir, there have been representatives of the executive of this State waiting on delegates to this Convention and asking that that amendment be considered by the Convention, because of its importance to the State. Not to me, sir, individually; I have no interest in it; I care nothing about it; but when representatives of the State, of the

executive, come here and say that this amendment is of importance to the State, I say, sir, that as a Convention we have no right to adjourn until we have at least considered that amendment.

I have another amendment, sir, Mr. Roche's, relative to the pensions of civil officers. I hold in my hand a petition from the police department of the city of Brooklyn asking that that amendment be considered by this body and that some action be taken with reference to it. The municipal police, by the amendment of Mr. Roche, have been especially excepted from the general provisions of that amendment. There is in the city of Brooklyn now a pension law for the city police, but there has been raised a grave question as to the constitutionality of one of the sources from which that fund is raised, and I desire, sir, when that amendment came before this committee, to move an amendment so that that municipal police pension fund could be retained, and so that there could be no question as to the constitutional right of the members of that force to have the fund, which I believe every citizen of the city of Brooklyn desires they should have. Those, sir, are only two within my own knowledge, and yet, sir, here, the first day after our compensation as delegates to this Convention has ceased, we have sprung upon us another resolution to adjourn. I say to you, gentlemen of the majority, vote it down. We owe a duty to the State, and that duty is on you, not on me. I am only one of the minority. Whatever I ask here will probably not be considered, but I say on you, gentlemen of the majority, rests the duty to keep this Convention in session until not only these two matters to which I have referred, but the many other matters, probably fifty or sixty in number, shall be at least considered by this Convention, and I hope this resolution will not prevail.

Mr. Durfee—Mr. President, none of the propositions that remain to be acted upon by this Convention were introduced by me. I have no personal interest in any one of them. Every consideration of personal interest would induce me to support the resolution which has been offered. But, Mr. President, I came here as a delegate to this Convention with the sole thought and purpose to discharge, as far as in me lay, my duty as such delegate, and I do not believe that I shall

have discharged my duty, nor do I believe that any gentleman on this floor will have discharged his duty, by voting for an adjournment of this Convention with its work not fully performed. For my part, at whatever sacrifice, at whatever cost of personal inconvenience, I prefer to remain here in the discharge of the duty imposed upon me, as I see it, until all shall have been done decently and in order (applause), and until we can adjourn, as such a body as this, called together only once in twenty years or more, ought to adjourn in a dignified and orderly way, having to the best of its ability performed the duty with which it has been charged by the people of this State. Holding these views, Mr. President, I shall oppose the resolution which has been offered by the gentleman from Essex.

Mr. I. S. Johnson—Mr. President, I suppose that it will avail nothing for me again to urge that this Convention do its duty. I suppose it will avail nothing if I call attention to the fact that upon the calendar of this body there are seven propositions which have been reported as the propositions of various committees of this body; that many of them have occupied the attention of the committees for nearly, if not quite, four months; that they are the combined wisdom of those committees, and that they deserve the consideration of this body. There are matters before this Convention that have been passed by the committee of the whole, have been ordered to a third reading and, upon the motion of the attorney of a corporation which may be affected, one of those amendments has been laid upon the table, and I have endeavored to secure an opportunity to ask that it be taken from the table and considered.

Mr. C. B. McLaughlin—Mr. President, I rise to a point of order. If it is heretofore ordered to a third reading, his measure is precluded.

Mr. Johnson—I suppose that everything that is not ordered printed to-night will not be considered to-morrow. I know that it is a matter of interest to the people of this State that something should be done by which the purity of elections shall be preserved, that something shall be done that the men who happen to have large sums of money at their command cannot go forth and purchase their nominations with impunity. I do not know why it

is that this matter has been allowed to rest, whether it is because a whisper has come from some corporation to other members of this body than the one who moved to lay it on the table. I do not know whether an official representative, that was so properly referred to by the President of this Convention, has sent out word that it will interfere with his manner of managing the affairs of one of the great parties, or both of the great parties. I think such matters as this deserve consideration at the hands of this Convention. I find again that a short time ago a party of men met in this city representing a half dozen more—all of the organizations of farmers in this State. They asked in their memorial and their petition that the matters which they thought of great interest to them should be considered by this body. They were allowed to have their memorial read and placed upon the files of members of this Convention. But when it comes to the question as to whether those matters shall be considered and heard in this Convention, then comes the rule that no further action shall be taken. The great body of working men of this State have said that they have certain matters which ought to be considered and which they asked to have considered, and they are refused. Why are they refused? The question arises here whether the great corporate trusts shall be stopped, whether there shall be something to prevent the monopolies owning the State, and again a refusal comes, that it shall not be considered. I tell you, sir, that the time is coming, and it is not far distant, when the people will say that the State should own corporations and

have the control of them, and not the corporations own and control the State; and I think it is a whisper from them that prevents the consideration of such questions as have been waiting and asking for consideration here. I hope, sir, that this resolution will not be passed. I hope that there is manhood enough in the majority, and in the minority, to stay here and do their duty; and I shall not believe that there is not that manhood until this vote is taken favorably upon the resolution.

Mr. Storm—Mr President, I do not believe that any amount of talk will change any votes upon this subject. I might have made my speech in half the time that has been consumed. In fact, I missed my only opportunity of making a speech to be handed down to posterity never to be read. However, even that opportunity was denied me. Now, in the interest of the economy of time, I move the previous question upon this subject.

The President put the question, shall the main question now be put, and it was determined in the affirmative.

The President then put the question on the adoption of the resolution offered by Mr. McLaughlin.

Mr. I. S. Johnson—Mr. President, I call for the ayes and noes.

The President—That privilege has been denied us by the late rule.

The President appointed as tellers Messrs. McDonough and Cochran.

A rising vote was then taken upon the question as stated, and it was determined in the affirmative—65 to 54.

The President announced the Convention adjourned until 10 o'clock Friday, September 21, 1894.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 134.

Friday Morning, Sept. 21, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber at the Capitol, Albany, N. Y., September 21, 1894.

Mr. President Choate called the Convention to order at 10 A. M.

The Rev. R. H. Shirley offered prayer.

Mr. Durnin—Mr. President, I move that the reading of the Journal of yesterday be dispensed with.

The President put the question on Mr. Durnin's motion, and it was determined in the affirmative.

The President—The Chair would state that a bill has been received from parties for summoning and paying witnesses' fees in the contested election case in the Sixth district, amounting to some seventy-five or eighty dollars, which has been referred to the committee on contingent expenses.

The President—Motions or resolutions are now in order.

Mr. I. S. Johnson—Mr. President, I move to take from the table the motion which was made by Mr. McMillan, relative to the bribery amendment, which was laid on the table September fourth.

The President—Mr. Johnson moves to take from the table the resolution offered by Mr. McMillan, which was laid on the table September fourth. The secretary will please read it.

The secretary read the same, as follows:

"Resolved, That the vote by which the report of the committee of the whole, on general order No. 54, relat-

ing to the use of money for political purposes, was agreed to, be reconsidered, and that the motion lay on the table."

Mr. Bowers—Mr. President, what was the date of that?

The President—It was laid on the table September fourth.

Mr. Nicoll—Mr. President, I make the point of order that this motion is in violation of the rule adopted last night with reference to the future business of the Convention.

Mr. E. R. Brown—Mr. President, the resolution adopted last night had reference only to those amendments that had been ordered to a third reading.

Mr. Veeder—Mr. President, I rise to inquire upon what subject delegates may now call for the ayes and noes under the rules.

The President—The secretary will please look up that rule.

Mr. Veeder—I would like to hear it read, so that we may know how far we are able to get upon the record, as the rules now stand.

The President—Has the chairman of the committee on rules a copy of that rule in respect to the ayes and noes? The ayes and noes were prohibited, as far as the chair recollects, upon previous questions and in matters of procedure relating to the order of business.

Mr. Veeder—In other words, the ayes and noes can only be called for on the final passage of a bill?

The President—Oh, no; upon agreeing or disagreeing to a report of the committee of the whole.

Mr. McMillan—Mr. President, I desire to say that I was impelled to offer this resolution for the reason that several delegates on the floor stated, after the committee of the whole had reported and the report had been agreed to, that it did not meet with their approval; that while all concurred in the principle involved in this amendment they did not feel satisfied with the particular provisions of the amendment itself. The suggestion seemed to have been made that it would interfere with the reform clubs in the city of New York; that it would interfere with many of the newspapers in the city of New York; and the resolution was offered by myself solely for the purpose of permitting those who were specially interested in the matter to perfect it, if possible. I have no objection personally to the consideration of this matter, but I would ask that the clerk read the proposed amendment for the information of the Convention.

The President—Will Mr. McMillan designate the number of it?

Mr. McMillan—It is printed No. 443.

The secretary read the same, as follows:

"Article 2 is hereby amended by adding the following sections:

"Sec. 6. The Legislature shall, by general laws, declare the uses which may be lawfully made of money or other valuable things by, or on behalf of, any person, to promote his nomination as a candidate for public office, and by or on behalf of a candidate to promote his election.

"The use or promise of money or other valuable thing to promote the nomination for, or election to, public office of any person otherwise than is expressly authorized by law, is prohibited and the person by whom or for whose benefit, with his consent, connivance or procurement the same is so used or promised if elected, shall forfeit his office.

"Sec. 7. No corporation shall directly or indirectly use any of its money or property for, or in aid of, any political party or organization, or for, or in aid of, any candidate for political office or for nomination for such office, or in any manner use any of its money or property for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used.

Every domestic corporation which violates this section shall forfeit its charter, and every foreign corporation which violates this section shall forfeit the right to do business in this State.

Sec. 8. In all civil actions to determine the forfeiture provided in this and the last preceding sections, and in all criminal prosecutions for violations of laws made to enforce this and the last preceding sections, no person shall be excused from testifying as a witness on the ground that his testimony may tend to criminate himself, but his testimony shall not be used in any criminal proceeding against him, except a prosecution for perjury committed in giving such testimony.

The President — Was not that amended?

Secretary Fitch—Yes, sir; and I have read it as amended.

The President—The question is on Mr. I. S. Johnson's motion to take this from the table.

Mr. I. S. Johnson—Mr. President, I believe that if there is any one thing upon which this Convention should act it is upon a measure of this kind, either in one way or the other. I believe something should be done to remedy an evil which, I think, exists all over this State, namely, the securing of nominations by the use of money. This measure, together with several others, was introduced and referred to this and other committees, and, as a result, the amendment, which was voted upon after being somewhat perfected and passed to a two-third reading, was reported by the committee. When it came before the committee of the whole it met with some opposition, upon the theory that it would affect injuriously the stockholders of corporations. It was urged that in case it was passed in the form in which it was reported by the committee, the injury would result to the stockholders, and not to the officers; and hence, undoubtedly, some members thought it was wise to oppose it. Other members thought that the first section recognized the right to use money at the polls and at caucusses, although the Legislature was required to vote upon it. Now, whether those suggestions have any weight or not, is a question for this Convention to determine; but, as to the main question, as to the use of money in securing nominations, it seems to me there can be no question whatever. I think it is due

to the candidate; I think it is due to to the people of this State, that if we can—as suggested by the President in his opening address—throw some other safeguards around the ballot, we ought to do it. So far as I am personally concerned, I am satisfied that if we make this amendment, the amendment which was introduced by myself, amending the present Constitution, by the insertion of four or five words, we will have a provision of the Constitution which prohibits the use of money at elections; that prohibits candidates from going out and purchasing nominations, and a provision which would, in my judgment, prevent corporations from using their money for the purpose of securing those nominations. Hence, my amendment was simply extending the present Constitution by inserting the words "primary elections, caucusses or conventions," so that the same provision of the Constitution should apply to primaries that now applies to elections. If that is satisfactory to the gentlemen who introduced other measures, I should be satisfied with it, when it comes in a proper manner, to offer this as an amendment. But I do not wish by this to take away any suggestion that is contained in the proposition introduced by any other member. Therefore, I hope this matter will be reconsidered, and then we can consider it anew.

The President—The question is whether the Convention will take from the table this matter which was laid on the table upon the fourth of September.

The President put the question on Mr. Johnson's motion, and it was determined in the negative.

Mr. I. S. Johnson—Mr. President, I call for a count.

The President appointed Mr. McDonough and Mr. Rogers tellers, and, upon a rising vote, the motion was again declared to be lost.

The President—Are there any other motions or resolutions? If so, they are in order.

Mr. Cookinham—Mr. President, I ask to take from the table a resolution which was offered by me on Friday last in regard to the bill presented by the sitting delegates from the Buffalo district for counsel fees in the contested election matter.

The President—The secretary will read that resolution.

The secretary read the same as follows:

"Resolved, That Harvey A. Putnam and Thomas A. Sullivan be, and they are, hereby allowed the sum of \$2,313.79, their expenses for counsel fees and disbursements in their contests in the Thirtieth district against Herman F. Trapper and Charles C. Beckwith."

Mr. Cookinham—Mr. President, I have not the slightest idea of saying anything upon this resolution, except that I believe the Convention should dispose of the matter. The bill was referred to two committees. The facts were stated before those committees, and, by a divided vote, a report was made in favor of allowing the bill as presented. A majority of the committee, as I understand it, believed that the amount was reasonable, that the Convention had the power to audit the bill, and that it ought to be audited. I, therefore, believe the Convention should act upon it.

Mr. Deady—Mr. President, that that bill should be allowed, I think nobody will contend against; but that it should be allowed by this Convention is quite another thing. This bill was audited as reasonable, and all of the committee agreed that the bill was a reasonable bill; but no one of the committee, I believe, except the gentleman who has just spoken, thought the Convention had any power whatever to pay this bill. If the Convention will notice the reading of this resolution, it does not say that it shall be allowed by the Convention. The Convention, I should say, would be perfectly willing to allow that these gentlemen should pay their counsel their expenses, but this Convention has no power—as gentlemen will see by the reading of the statute appropriating money for the expenses of this Convention—to do this thing. You will readily see that this Convention cannot possibly by any torturing find these expenses to be part of the expenses of this Convention. It is an expense incurred by members of the Convention, and we might just as well allow them for their board bill as to allow them the expenses incurred for counsel fees. There is no question but that the Legislature has the power to defray these expenses and to reimburse these gentlemen, but this Convention has not that power. The members of the Convention will notice that in every session of the Legislature where there is a contest, in order to even allow members of the Assembly

for their expenses a special bill has to be passed appropriating the money for that purpose. We have no such power. The money that is intrusted to us for the legitimate expenses of this Convention can only be used by us for such expenses.

The President—Does any other gentleman desire to be heard upon Mr. Cookinham's motion? If not, the question will be put.

The President put the question upon the motion made by Mr. Cookinham, and it was determined in the negative.

The President—Are there any other resolutions or motions? This seems to be a favorable morning for resolutions, and perhaps Mr. Dean has something to offer.

Mr. Dean—Mr. President, I am very anxious to be regulated by the resolution adopted last evening to adjourn to-morrow, and I, therefore, refrain from offering anything.

The President—Third reading will now be proceeded with. Third reading No. 27, printed No. 432, introduced by Mr. C. H. Truax. The secretary will read the title.

The secretary read the title, as follows:

"Amendment introduced by Mr. C. H. Truax, introductory No. 256, to amend article 14 of the Constitution."

The President—This matter is now open for debate. The amendment was introduced by Mr. C. H. Truax, who will probably be able to enlighten the Convention upon it.

Mr. C. H. Truax—Mr. President, this is such a simple matter that it needs no argument, except to read the three lines that compose the proposed constitutional amendment: "This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided."

It amends article 14 of the Constitution in no other respect.

Mr. Veeder—What have the people to say about it?

Mr. C. H. Truax—I do not know what the people have to say about it. We shall have to wait until election day, in November, and then we shall see what the people have to say about it.

The President—Does any other gentleman desire to be heard on this amendment?

Mr. Jesse Johnson—Mr. President, I would like to ask Judge Truax what is

the necessity of any provision of this kind, in view of the amendment as it now stands?

Mr. C. H. Truax—I do not understand what the gentleman means. The act under which we are assembled here requires us to specify the time when the Constitution shall take effect, and we do specify it in this manner.

Mr. Veeder—I move to amend Judge Truax's proposed amendment by inserting in line 5, after the word "Constitution," the words "if adopted." I move to recommit the proposed amendment to the committee, with instructions to amend it and report forthwith.

The President put the question on the motion made by Mr. Veeder, and it was determined in the negative.

The President—If there is no further debate, the secretary will now read the bill for the third time.

The secretary read the same, as follows:

"Article 14 of the Constitution is hereby amended by striking out all of said article except the thirteenth section, and by amending that section so that the article shall read as follows:

ARTICLE XIV.

"This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided."

The President—This matter having been read the third time, the question is now on its final passage. The secretary will call the roll, and those in favor of it will say aye, and those opposed no.

The secretary proceeded to call the roll.

Mr. Holcomb—Mr. President, I would like to explain my vote. I see in the Herald this morning that one of the delegates to this Convention has made the discovery that the present Constitution does not require amendments to be submitted to the people at all, and, because the Convention has just voted down the motion made by the gentleman from Kings (Mr. Veeder), to insert in line 5, after the word "Constitution," the words "if adopted by the people," I shall have to vote no.

The President—This constitutional amendment having received the affirmative vote of a majority of the delegates present, is adopted: 107 in the affirmative and 4 in the negative.

The amendment was adopted by the following vote:

Ayes—Messrs. Abbott, Acker, Ack-erly, Arnold, Baker, Banks, Barnum, Becker Bigelow, Brown, E. A.; Brown, E. R.; Burr, Cady, Campbell, Carter, Church, Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Davenport, Davies, J. C.; Deady, Dean, Deyo, Dickey, Doty, Durfee, Durnin, Emmet, Faber, Farrell, Floyd, Forbes, Francis, Frank, Augustus, Fraser, Fuller, C. A.; Fuller, O. A.; Gallinger, Giegerich, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H.; Hawley, Hedges, Herzberg, A.; Hill, Hirschberg, M. H.; Hollis, Hottenroth, Jenks, Johnson, I. Sam; Johnson, J.; Kellogg, Kurth, Lester, Lewis, C. H.; Lewis, M. E.; Lyon, Manley, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinsty, McLaughlin, J. W.; McMillan, Mereness, Moore, Morton, Nichols, W. H.; Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Platzek, Putnam, Redman, Roche, Rogers, Spencer, Steele—W. H.; Storm, Sullivan, T. A.; Tibbetts, Truax, C. H.; Truax, C. S.; Tucker, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Williams, Woodward, President—107.

Noes—Messrs. Holcomb, Schumaker, Titus, Veeder—4.

The President—The next proposed amendment on order of third reading is No. 28, printed No. 393. The secretary will read the titles.

The secretary read the title of the same as follows:

"Introductory No. 206, introduced by Mr. H. A. Clark, relating to civil service.

Mr. Hotchkiss—Mr. President, may I ask from the Chair, or from someone who can give the information, the meaning of the words in the ninth and tenth lines, "who are not otherwise disqualified for such appointment or promotion?"

The President—The Chair has no knowledge on that subject.

Mr. Hotchkiss—Has any member of the Convention any interpretation to put upon those words. If not, I move that this proposed amendment be referred back to the committee from whence it came with instructions to strike those words out and report forthwith. To me those words are meaningless.

The President—Do you mean the words "Union soldiers and sailors?"

Mr. Hotchkiss—No, sir; I mean the words immediately following: "Who are

not otherwise disqualified for such appointment or promotion." There is no attempt on the part of this section, or in any of the words in it, to qualify anybody. It is simply words of exemption with respect to soldiers and sailors.

Mr. Hawley—Mr. President, I think there is great difficulty in understanding exactly what this last sentence, to which Mr. Hotchkiss has called attention, means, and that it ought in some way to be reconstructed. I doubt whether the suggestion which has just been made will effectually accomplish that purpose, because if you strike out the words "who are not otherwise disqualified," the sentence will then read that "honorably discharged Union soldiers and sailors shall be exempt from the provisions of this section." That is to say, they shall be exempt from any merit or fitness. The sentence as it now reads would seem to exempt them from any qualifications whatever. The committee on revision have had this sentence under long consideration. The friends of the measure have considered it, and I think I am right in saying that the present phraseology is not exactly satisfactory to anybody; certainly it is not exactly satisfactory to anybody whom I have heard speak upon the subject. I am not able to furnish any satisfactory solution of the difficulty which seems to be in the sentence under consideration, but I certainly hope somebody will be able to present to the Convention before this article shall be put upon its final passage some form of expression which will express the idea which is desired here, but yet which shall require some measure of fitness and qualification for public positions even of a Union soldier.

Mr. Hotchkiss—Mr. President, I move that the proposed amendment be laid aside for the present until it can be perfected, not losing its place on the calendar in the meantime.

The President—You mean the amendment offered by yourself?

Mr. Hotchkiss—No; I mean the proposed constitutional amendment.

The President—The Chair is of opinion that that cannot be done during third reading.

Mr. Hotchkiss—It seems to me unfortunate, to say the least, that we should be compelled to go on and vote upon a measure so important as this,

that it is apparently satisfactory to no one who has considered it.

The President—It is very easy to have those words stricken out, and then make it satisfactory to everybody. The question is on Mr. Hotchkiss' amendment to recommit with instruction to report forthwith striking out the words "who are not otherwise disqualified for such appointment or promotion."

Mr. Tibbetts—The effect of that amendment would be to nullify the last clause by striking out those words. It would really be interpreted that they could not receive such appointment and promotion in any case. Now, sir, for the purpose of making this more explicit, I move the following amendment:

"Honorably discharged Union soldiers and sailors shall be exempt from such examination, and shall be entitled to preference in such appointment and promotion."

That reads the same as the civil service law does now.

Mr. Countryman—Mr. President, I move to amend the motion to recommit, so as to strike out the entire clause reading as follows:

"Honorably discharged Union soldiers and sailors, who are not otherwise disqualified from such appointment or promotion, shall be exempt from the provisions of this section."

It is, perhaps, proper for me to say that it is one of the best principles of the Mugwumpian creed that this article, as reported by the committee, should be acknowledged and acted upon in the administration of the civil service. It would afford me great pleasure to vote in favor of the article as reported by the committee, but in this last clause I submit that we recognize and incorporate into the Constitution a principle which is at war with all Democracy and Republicanism, whether we regard it from the standpoint of principle or from the standpoint of partisanship. It would recognize and create a privileged class in the community. It would exempt all soldiers and sailors from the provision of the Constitution, and would entitle them, without regard to merit or fitness, to be entitled to any office to which they aspired as against other members of the community. Are we prepared to recognize any such privilege as that, and especially, too, by recognizing it in the fundamental law

of the State? Are we prepared, as Democrats on the one side or as Republicans on the other side, all of whom profess to look to that great apostle of Democracy and Republicanism, Thomas Jefferson, and to repudiate one of the first principles which he inculcated as necessary to be recognized in our institutions, by catering to the military class, as such; by establishing them as a privileged class in the country, and thus putting ourselves, at least, in an attitude where we may soon be subject to the dangers arising from such a recognition, as was pointed out by that great apostle of American democracy, and as fully established by an early writer, Montesquien, in his "Spirit of Law," laid it down as a general principle that it is one of the great dangers of all democracies and all republics that they were inclined to cater to the privileged military class as such? Mr. President, no one has a greater respect for the soldiers and sailors than I have, and I would do anything reasonable and proper and constitutional and consistent with these institutions to recognize and honor them, but when it comes to establish them as a separate privileged class in the community, exempt from the Constitution of the State, I am not prepared by my vote to recognize any such principle. I was about to criticize this clause more in detail, but I understand it to be now practically conceded on all sides of the house that, in its present form, it ought not to be accepted here. I say it ought not to be accepted in any form whatever, and, therefore, I hope that clause will be stricken out.

Mr. I. S. Johnson—Mr. President, I should be false to the State, false to the nation, and false to more than half a million of soldiers who went from this State to do their duty at the front, men who sacrificed more than any other class of people in this State ever sacrificed, if I should allow to go unnoticed the remarks made by the learned gentleman from Albany (Mr. Countryman) on Saturday last; and I desire to call attention to them especially because in all the speeches made in the south by confederates I have never seen anything which was more contemptible to the Union soldiers than were these words: "You have emptied the national treasury and mortgaged the revenues of the government for the next fifty years to bribe the soldiers to get their votes."

Mr. Countryman—And I repeat that remark now, sir.

Mr. I. S. Johnson—If the gentleman will consider for a moment the charge made here, that the Union soldiers are being bribed by the use of pension money, I think he will find that there is no man upon the Democratic side that will support him in that charge for a single moment. Mr. President, the Democratic soldiers in the army were as brave, as honest, and as faithful as were the Republican soldiers. When they met on the great battle field of Gettysburg, and stood there, a line four miles long, and when the prayers of the American people were going up all over the country on that Sunday when the fight was hottest, I tell you, gentlemen, they were not men who were to be bribed. When they lay in Andersonville prison for months and months, and were offered their liberty and refused it at the sacrifice of honor, they were not the men to accept bribes. Mr. President, this is not a matter of pensions or of giving something. It is a matter of carrying out a contract, a vested right. A distinguished Democrat in the Senate of the United States, within the last year, I think, has passed in that body an act which declared upon its face that it was a vested right. And why was it a vested right? It was a vested right because before those men served the country, and at the time they were serving the country, there was put into the laws of Congress a provision like this: "Any officer or soldier who has been disabled by reason of wounds or disease contracted while in the service of the United States shall be placed upon the list of invalid pensions."

Before this they had said:

"If any person, officer or soldier called into the service of the United States be wounded or disabled while in the service, he shall be taken care of and provided for at public expense."

That ripened into a contract, into a vested right. And because some poor man who happened to be upon the field of Chancellorville when that fire rushed over acres and acres, and had his limbs burned, and came out of the service and asked a pension, is it to be said that he is a bribe-taker?

The President—Does not Mr. Johnson lose sight of the question before the house, which is upon striking out these last three lines?

Mr. I. S. Johnson—No, sir; I do not, because that is the only thing in it which has any reference to the Union soldiers

The President—The only reference to Union soldiers is their being exempt from the provisions of this act.

Mr. I. S. Johnson—As I understand it, the gentleman moved to strike out all that portion, and I say that when it is charged that the Union soldiers are bribe-takers, the statement ought not to go unnoticed in this Convention. I say that side by side with that statement should go a repudiation of it. I have never applied for a pension, and I never expect to as long as I can earn my own living, but the men who have suffered and have thus been obliged to ask for a pension should not be malinged in this way, and it is an outrage to charge them with being bribe-takers. Why, sir, the gentleman—

The President—The Chair must insist that the subject of pensions is not embraced within the pending amendment.

Mr. I. S. Johnson—But it was embraced in it when this language which I have quoted was used.

The President—You have answered that.

Mr. I. S. Johnson—I have, and the gentleman (Mr. Countryman) has reiterated it. I think, gentlemen, that this provision should be continued in some form that will recognize the rights of the Union soldiers.

Mr. Mereness—Mr. President, I would like to inquire of the friends of this measure, whether this will include all the soldiers and sailors who have enlisted and served the allotted time since the close of the war; and, if that is so, why they ought not to include those who have served the prescribed time in the State militia?

Mr. McIntyre—Mr. President, I move to amend lines 9, 10 and 11, so that they shall read as follows: "Honorably discharged soldiers and sailors who served in the late war, and who are not otherwise disqualified for appointment or promotion, shall be exempt from the provisions of said competitive examination."

The President—Mr. McIntyre will send his amendment to the secretary's desk.

Mr. Nicoll—Are amendments in order, Mr. President?

The President—They are.

Mr. Nicoll—I would like to offer an amendment to strike out lines 3 and 4, and substitute the following: "Appointment and promotions in the civil

service of the State, and for all the civil divisions thereof, including cities and villages." The purpose of my amendment is obvious. I know of no reason why the desirable principle contained in this amendment, if it is proposed to be put into the Constitution at all, should not be extended to civil appointments in counties, towns and villages. What reason can be given for excluding office-holders in villages or in towns, or in counties, from this principle? Why should not their fitness be ascertained as far as possible by examination, and why should not the test of merit and fitness be applied to them as well as to candidates for office in the cities or in the State at large? There is a disposition here, I think, to exempt the towns and villages which should not be permitted. For my own part, it seems to me a matter of grave doubt whether this provision ought to be in the Constitution at all. The Legislature has taken care of the subject, and the laws are being executed now with more or less diligence. It may very well be left as it is, but, if it is to go in the Constitution, let us at least be consistent and extend it over the whole State.

Mr. Gilbert—Mr. President, in answer to that, I would say that the committee thought this whole provision was carefully guarded against. It was deemed entirely unnecessary and impracticable to attempt to apply it to villages and towns and counties. When gentlemen come to think about it, they will see that there are scarcely any appointments in a county, and scarcely any in a town or a village, and to have the machinery of an appointing board for a county, where there are only one or two appointments, would seem to be impracticable. The Legislature may do it, but we do not think they should be required to do it, for the simple reason that it is impracticable.

Mr. McClure—Will the gentleman allow a question?

Mr. Gilbert—Certainly.

Mr. McClure—I would ask the gentleman whether there are not in the counties such appointments as deputy county clerks, deputy sheriffs, and many other appointments of a similar kind, where it would not be impracticable at all to apply the terms of this amendment?

Mr. Gilbert—My answer to that is, that almost all those officers are not in

our counties at all. Franklin county has no such officers.

Mr. McClure—Mr. President, we are not here making amendments to the Constitution to affect Franklin county alone. I asked the question relative to all the country localities of the State; not as to Franklin county simply. I do not understand that this committee propose this amendment in the interest of Franklin county alone. I take the position that Mr. Nicoll has taken, that there seems to be a desire, or an unwarranted and unnecessary discrimination, as between the county officials and the city officials. If this is a good thing to put in an amendment—and I share the doubt of Mr. Nicoll as to the propriety of it—it should apply to the entire State, to sheriffs, county clerks, registers and surrogate officers. It is absolutely necessary that in those counties there should be some discrimination made as to the men who fill those positions. This amendment should be broad enough to entitle it to the support of the public at large, and I cannot understand the explanation of the gentleman as being at all valuable when he says that the committee found my suggestion to be not at all practicable. Of course, a committee can so find if they desire, but that is a very insufficient explanation of their failure to have this article apply to all parts of the State.

Mr. Gilbert—The gentleman seems to entirely miss the point of my answer. I think he should consider it as sufficient. The officers to whom he refers are not officers we have in our counties, and I only mentioned one by way of example. Of course, in New York county they do have such officers, and the city provision covers them.

Mr. McClure—Mr. President, I desire to say a word in answer. The gentleman from Franklin (Mr. Gilbert) seems to take advantage of the suggestion that I referred to registers, and to say that they do not exist in his county. The duties of registers are, however, discharged by county clerks in those counties of the State where there are no registers, and in a great many counties there are registers.

Mr. Gilbert—Yes; but they are elected.

Mr. McClure—The gentlemen will please not misapprehend me. I am not talking about elective officers. I am talking about the officers that the elected officers appoint. There are deputy county clerks in every county of the

State, I think, and every member of this Convention knows it. There are appointees of the sheriff, such as deputies and clerks. There are appointees of the surrogate's office, with all its important business, having charge of the affairs of widows and orphans, and you can put in any politician you chose and he shall not be subject to the terms of this amendment; whereas, in the city of New York and in the city of Brooklyn and in Buffalo, it cannot be done. Then in the district attorney's office there are assistant district attorneys, officials charged with a semi-judicial duty. And the same is true with respect to county treasurers. Why, sir, the instances are too numerous to mention, and I could overwhelm the gentleman from Franklin with them, if he would not come back at me with the simple suggestion that it is not practicable to apply this amendment to them. Mr. Hawley tells me that there are five appointees in his town who would be subjected to this amendment. Now, gentlemen, be fair in this matter.

Mr. Nicoll—Be broad.

Mr. McClure—Yes; be broad, as Mr. Nicoll says. Come out of the position which Mr. Nicoll illustrated you as being in so humorously last night, and try and sit here and bear in mind that you are making constitutional amendments for the whole State. I would like this Convention to make the amendments to this Constitution so broad and fair and general that there cannot be the charge made that there is a discrimination intended, and that what is god law, by way of constitutional amendment, for a city, is not good law for the country, as if all the honesty and integrity and intelligence of the State were lodged in the country districts, and there was no discrimination as to appointments there.

Now, I want to add a few words with reference to the part of the amendment that refers to the exemption of honorably discharged Union soldiers and sailors. That seems to be an exception which is not at all necessary at this day. With reference to the eloquent remarks of my friend, Mr. Johnson, I have only this to say, as was said by a distinguished counsel with reference to the summing up of his opponent in a case, that after having heard that speech for so many years, he would simply remark that he always did like that kind of a speech.

Mr. Durfee—Mr. President, I have an amendment to propose to the last par-

agraph of this proposed constitutional amendment. I move that it be committed to the committee, with instructions to report forthwith, as follows: Strike out in lines nine and ten, the words "who are not otherwise disqualified for such appointment or promotion," and in line eleven strike out the words "provisions of;" and in line nine, after the word "sailors" insert the words "of the late civil war;" and line eleven, in lieu of the words "provisions of," insert the words "examinations required by." So that the last clause will read as follows:

"Honorably discharged Union soldiers and sailors of the late Civil war shall be exempt from the examinations required by this section."

It will be observed that the first paragraph of this amendment requires that appointments and promotions shall be made according to merit and fitness, which is to be ascertained, as far as practicable, by examination. I do not suppose that it is the intention of anybody that soldiers and sailors shall be relieved of the requirement of merit and fitness; only that they shall be relieved of the requirement of passing an examination. Merit and fitness may be ascertained in other ways than by examination. I, therefore, make this amendment for the purpose of simply exempting the soldiers and sailors from the examination required by the section.

With reference to the suggestion made by the gentleman from New York, that this amendment ought to apply throughout the State in the country districts, there are very few places in the counties of the State known as the country districts, that are filled by appointments. It is a rare thing that you find an assistant district attorney or an assistant surrogate. Of course, there are one or two deputy clerks, with that exception there is hardly an office that is filled by appointment. As Mr. Gilbert has suggested, the creation of boards of examiners to examine a limited number of persons for a very limited number of positions to be filled, would seem to be most impracticable and entirely undesirable.

Mr. Mulqueen—Mr. President, I rise as a Democrat to repudiate the sentiment expressed by the gentleman from Albany, Mr. Countryman, that the pensions given by a grateful country to its soldiers and sailors are used as a bribe. Sir, the soldier receives his

pension, not as a charity, but as a right. It is given by the country to the men who, in our country's need, risked their lives that the Union might live. I am glad to say that the gentleman (Mr. Countryman) is in doubt whether he is a Democrat or a Republican, because I believe every Democrat, both in this Convention and out of it, is proud that this land of ours appreciates the services that were rendered to it by the soldiers of the country, irrespective of party, and we rejoice that our country is, at least, doing its mite to save those poor men and their families from want because of the sufferings they endured in the great battle for the Union.

Mr. Peck—Mr. President, I think enough discussion has been had upon this subject to make it appear that it is very dangerous to pass this article in its present form. This examination in the full Convention has disclosed many defects in the article. But I have handed up an amendment to the section which, it seems to me, is very essential, if it is to be passed at all. That is, it now provides that all honorably discharged soldiers and sailors, wherever residing, whether in California or Alaska, or Maine, or at any distant point in the United States, may, if they come here, be appointed and must be appointed to places in the public service without any examination at all. This amendment is, of course, intended to benefit the soldiers and sailors residing in this State, and I have, therefore, handed up an amendment to insert after the word "sailors" the words "citizens of this State." So that if it shall be passed at all—as I think it ought not to be, for it better be left to the statutes—it will benefit the citizens of this State alone.

Mr. Jesse Johnson—Mr. President, while I will not claim to have been one of the foremost advocates of civil service, I certainly have been friendly to it; but, sir, I see no necessity whatever of loading up this Constitution with any provision of this kind. It is legislative first, last and all the time. I can see reasons for legislating where the Legislature has failed in its duty. For instance, the question of pool selling is legislation, and there I believe the Legislature has failed in its duty, and I can see my way there to legislate in the Constitution. But there is no advocate of civil service to-day

that will deny that all the fair demands of the advocates for civil service have been met by the law-making power. The Legislature has not been backward. Why, then, legislate? We might as well legislate here as to the form of an insurance policy, or as to the technique of bridge building across some creek. And there is another reason. Here we are trying to engraft a general principle, and we admit at the outset that there is an exception, and we are trying to adjust, for the permanent language of the Constitution, the exception which we all agree should be made, and we cannot do it. Sir, I would not vote for any legislation without this exemption for Union soldiers. That is necessary. But is there no difference between the volunteers who left the farm, the mill and the forge at the call of country to save the nation, and the men who, yesterday or the day before, went down to Fort Hamilton and enlisted? I am in favor of the Union soldier that saved the country. If this must go through, have that there; but I am not quite certain that I am anxious to put into the Constitution that every man who enlists for the next twenty years in the army and gets out again, can evade civil service, and that is what this does. I think the amendment should be beaten. It does not belong in the Constitution, and I think the advocates of civil service, of which I am one, should be satisfied with the full and abundant provisions that have been made from time to time by the Legislature, fully abreast of the times, and for all that was asked.

Mr. Dean—Mr. President, I had not intended to speak on this subject, but there seems to be such a disposition to take up the full hour allotted to it that I thought it would not be out of place for me to make a few remarks as representing the younger element, the men who have been born since 1850, and who have been making sacrifices ever since to the inordinate ambition of the old soldier to hold all the offices. Mr. President, I know some old soldiers. Some of the best friends I have were in the army, and they were fighters, but they are not asking any special concessions on the part of this Convention, or on the part of the people of this State. The men who went to the front and fought, the men who had the courage to do and die, if need

be, for their country, are not beggars; they are not paupers. They are not asking this Convention to place in the fundamental law of the State special provisions that they shall hold office, whether they are qualified or not. That is substantially what this provision does. We may make all the exceptions we wish, but if an old soldier gets to one of these appointing officers, he manages to get in, whether he is competent or not. I know at least half a dozen instances in the city of Albany where men who are absolutely incapable of satisfactorily performing their work are filling public positions under the civil service. That is what is the matter with the civil service. It is not because of any civil service reform, but it is because we have been putting incompetent men into office because they discharged their duty in the early sixties, as any one of us is ready to discharge our duty to-day if called upon. We are discharging the duties of the hour, and we are ready to discharge whatever duties we are called upon to perform. I am opposed to this civil service amendment, whether under an exception to the old soldier or under any pretext whatever.

Mr. Woodward—Mr. President, I wish to suggest that we discuss this question until to-morrow night and then adjourn.

The President—There are but fifteen minutes left now of the time for this discussion.

Mr. Morton—Mr. President, very much might be said about the operation of the civil service in this State, but I do not propose to say it here. There is no principle more firmly established in the policy of this government, both national, State and local, than the preferment which the grateful people of this country are always willing to bestow upon the soldiers and sailors who defended the Union in the hour of its peril. Laws of the State of New York cover this case completely, and the laws of the United States and the orders of the executive branch of both the national and State government attempt to cover this question, but they never have successfully done so. After thirty years and more of experiment upon this subject, it is high time that in the few remaining years that are left to be occupied by this question something more tangible and practical than has ever yet been done should be secured, and I think the place to secure it is in the Constitution of the State. I believe

the amendment offered by Mr. Durfee practically effects the purpose, but it is deficient, in my judgment, in that it does not declare the eligibility of the soldier and sailor to appointment, and I, therefore, offer this amendment, to be added to the one presented by Mr. Durfee:

"And shall be eligible for such appointment or promotion without such examination."

Mr. Tibbetts—Mr. President, we are not here as beggars. We are not here as the originators of this idea. It is proposed to put into the Constitution of this State some amendment in reference to the civil service. If such an amendment is put into the Constitution, we say you shall take no step backward, that you shall do by the soldiers and sailors of the late war what this State has done by statute, and what the United States has done by statute, and what every Northern State has done, either by statute or in its Constitution, and that the great Empire State ought not to leave out if you put this into the Constitution. We say that if you put it in there, you shall not take a step backwards and shut us out from the provisions which the Legislature of this State, both Democrats and Republicans, have so generously proposed. I want to read a little extract from the last law that was passed upon this subject, the civil service law itself, which makes this exemption:

"In grateful recognition of the services, sacrifices and sufferings of persons who served in the army or the navy of the United States, in the late war, and have been honorably discharged therefrom, they shall be certified as such by the commissioners, board or officers authorized to report the names for appointment or promotion to the appointing officer, or other appointing power, and shall be preferred for appointment to positions in the civil service of the State, and of the cities affected by this act, and the several acts hereby amended, over all other persons, though graded lower than others so examined and reported, provided their qualifications and fitness shall have been ascertained, as provided under this act, and the several acts hereby amended, and the person preferred shall not be disqualified from holding any position in said civil service on account of his age, nor by reason of any physical disability, provided such age or disability does

not render him incompetent to perform the duties of the position applied for."

Then a provision follows that which exempts them absolutely from any examination for a position where the pay is under four dollars a day. Now, speaking on the proposition which I made originally, I thought it would cover everything; I thought by putting it in language which I did, it would cover all the propositions. It may be, however, that residents of the State should be included. I am inclined to think they should. It probably is true that soldiers of the late civil war should be included, so that those who enlisted in the regular army since 1865 should not have that preference. I have tried to remedy that in my amendment. But, sir, the word "preference" should be in there. If you leave out the word "preference" we will be no better off than we were before. We shall be left then to the discretion of a civil service commission who have forgotten all about the late civil war, whose ancestors knew nothing about it by actual experience, and who are civil service reformers of the English type. We do not want it left to such a commission. We ask that if you change the original wording as it was presented it shall read in the manner which I propose, and that the soldiers and sailors shall be entitled to preference in such appointment and promotions, and shall be exempt from such examination. Then you do make a preference; then you do say that with equal standing we shall have preference. That is all we ask, and that we are entitled to have. Mr. Countryman and those of his kind, who were not our friends in the late civil war, talked very differently then. They were very anxious for the boys to go to the front. They got behind them and crowded them on ahead; young men and old men, too, were crowded to the front. Mr. Countryman and his ilk stayed behind. We performed the service that the country demanded for Mr. Countryman, and for the people of the State of New York, and now we insist that you have not recompensed us for it. You gave us \$11.13 a month in depreciated currency—

Mr. Countryman—Will the gentleman permit a question?

Mr. Tibbetts—Yes sir. As many questions as you like.

Mr. Countryman—My question is: How much do you want?

Mr. Tibbetts—We do not want any pay in dollars and cents, but we do say that those of us who are not able to pass these examinations by reason of palsied arms or debilitated intellect, and who have not had an opportunity by a recent graduation to answer technical questions, shall not be put behind those who are our superiors in these respects. You will remember, Mr. Countryman, the motto that was placed on the Capitol—

The President—Mr. Tibbetts will address the Chair.

Mr. Tibbetts—I thought Mr. Countryman needed more of this than the Chair did. The President of this Convention is all right, but Mr. Countryman has expressed himself so that we are satisfied that we know his position. Now, that motto was—and I want you all to remember it, because it was the sentiment of the people throughout all the north—"This nation owes no debt it cannot pay, except the debt it owes its brave defenders." That was the sentiment of the North, gentlemen, but you have forgotten it, or you are forgetting it, those of you who were born since that war closed. Mr. President, if this is to be left as the statute reads, we are content. If it is to be put into the Constitution we ask as a monument of gratitude, if for no other reason—because it won't be very long that these old soldiers and sailors will be with you—that you shall make that honorable exception in their favor, in the language of the statute, or in language equally strong.

Mr. Gilbert—I want to correct a misapprehension, Mr. President. This discussion has drifted away from the main proposition. I will only say, in regard to the proposition that has been discussed principally, that I do not think that the soldiers to whom we do owe a debt that we can never pay, are entitled to preference. As my friend who has just taken his seat said, in a little while they will be with us no more. But now I come to the main proposition. The gentleman from Kings, Mr. Jesse Johnson, has stated here with great emphasis that the Legislature can provide now for every requirement of civil service reform in the State. That is a total misapprehension of the facts in the case, and that I want to call attention to. It is not true. The Court of Appeals has

held that appointments cannot be made in the prison service, and in the public works service, under the rules of the civil service. The case came up as to one of them, but the same reason that applied to that one obtains as to the others. So that I may say that under the law as it now stands, and under the Constitution as it now exists, the civil service rules cannot be applied to the prison service, or to the public works service. I think that is reason enough for the passage of the main proposition. If there was time, I could read to this body from the report of the civil service commission what hospital superintendents and what the superintendents of other public institutions have said as to the great benefit that has accrued from this mode of service. Let me say as to the general scheme, that it provides, first, that appointments and promotions shall be based, not only upon merit, but also upon fitness. Fitness means, fitness for the particular thing to be done; not merely general intelligence or general merit. It means that a man shall be able, by his services, to fit into the requirements of the public service. That is one thing. That is a universal proposition. Now, in the next place, how is that fitness to be ascertained? Well, in a multitude of cases it will be ascertained by the simple judgment of the person who is to make the appointment, but there are cases where it is practicable that appointments should be made where this fitness should be ascertained by examination. Now, we make the rule very elastic. We do not say that there must be examinations everywhere, because that would be impracticable; but we say that wherever it is found in actual trial to be practicable to apply the rule of examination, there it shall be applied. And we say that wherever such examinations may be competitive, and that is practicable, then they shall be competitive. But we do not say that in any given case you must have an examination. Wherever it is practicable that such whether it is practicable or not, examination shall be competitive, then we say make it competitive. It does seem to me that nothing can defeat this proposition except a misapprehension of what it means.

Mr. Cochran—Mr. President, I only want to repeat what I said the other day, that I am opposed to putting into the Constitution this civil service article; but if it is

to go in, then I believe we should have some provision with reference to the honorably discharged soldiers and sailors. As I understand the amendments offered by Mr. Durfee and some others, they go much further than any laws now in existence in that they exempt the honorably discharged soldiers and sailors entirely from any examination. Now, if they are exempt from examination, I fail to see how their other qualifications could be determined. I believe that all we should do is to go as far as the present law is, and that is, to entitle these honorably discharged soldiers and sailors to preference after they have passed the civil service examination. Therefore, Mr. President, I offer an amendment, which I will send up to the secretary's desk.

The President—First, the question will be upon Mr. Hotchkiss' amendment to Mr. Nicoll's amendment.

Mr. McIntyre—Mr. President, the only words I cared about were to have inserted the words "of the late civil war." In the several amendments since I made that those words have been incorporated, and, therefore, I will withdraw my amendment.

Mr. Hotchkiss—Mr. President, the amendment which I offered was not an amendment to Mr. Nicoll's amendment, but it was a separate amendment, intended to be offered in case his amendment failed.

The President—Then the question will be put first upon Mr. Nicoll's amendment, which the secretary will read.

The secretary read Mr. Nicoll's amendment, as follows:

Strike out lines three and four and substitute the following:

"Appointment and promotion in the civil service of the State, and for all the civil divisions thereof, including cities and villages."

The President put the question on the amendment offered by Mr. Nicoll, and it was determined in the affirmative.

The President—Now, does Mr. Hotchkiss press his amendment?

Mr. Hotchkiss—No, sir; I withdraw my amendment.

The President—Now the question will be put upon the other amendments, all of which relate to the last clause.

Mr. Gilbert—Mr. President, will you give us a count upon Mr. Nicoll's amendment?

The President—Yes, a count may be had. Mr. Holls and Mr. Countryman will please act as tellers.

The President again put the question on Mr. Nicoll's amendment, and it was determined in the affirmative by a vote of 61 ayes to 36 noes.

The President—The question will now be taken upon the various amendments to the final clause, but as the motion of Mr. Countryman, if adopted, will save a vast deal of time, and dispense with all the others, the question will be put upon that first. The secretary will read it.

The secretary read Mr. Countryman's amendment, as follows:

To recommit the proposed amendment with instructions to strike out the following clause:

"Honorably discharged Union soldiers and sailors, who are not otherwise disqualified from such appointment or promotion, shall be exempt from the provisions of this section."

The President put the question on Mr. Countryman's motion, and it was determined in the negative.

The President—The question will now be put upon Mr. Cochran's motion, which the secretary will read.

The secretary read Mr. Cochran's motion as follows:

"Strike out lines nine, ten and eleven, and insert the words:

"Provided, however, that honorably discharged soldiers and sailors from the United States in the late civil war shall be entitled to preference in appointment and promotion, without regard to their standing in any list from which appointment or promotion shall be made."

The President—Mr. Holls and Mr. Countryman will please act as tellers.

The President then put the question on Mr. Cochran's motion, and it was determined in the affirmative—59 ayes, 24 noes.

The President—The chair is of opinion that this dispenses with the necessity of putting any of the other motions, but if gentlemen making them insist upon it, they will be put.

Mr. Peck—This does not dispose of the resolution that I offered, that these soldiers and sailors shall be limited to such as are citizens and residents of the State of New York. I am willing that it shall be inserted, however, in Mr. Cochran's amendment, and I make that motion.

The President put the question on the motion made by Mr. Peck, to insert in the amendment already adopted of Mr. Cochran's, after the word "sailors," the words "citizens and residents of this State," and it was determined in the affirmative.

The President—The Chair is of opinion that these amendments, having been adopted, it dispenses with the propriety of putting any of the other motions. The proposed constitutional amendment will now be read for the third time, as amended.

Mr. Cochran—Mr. President, I would suggest that the word "navy" after the word "army" is a grammatical error. It should read "army and navy."

The President—If no delegate objects, that correction may be made, and the secretary will read the proposed constitutional amendment through for the third time.

The secretary read the proposed constitutional amendment as finally amended.

The President — This amendment having now been correctly read a third time, the final vote upon its passage will be taken. The secretary will call the roll and those in favor will vote aye, and those opposed no.

The secretary proceeded to call the roll.

Mr. Abbott—Mr. President, I desire to explain my vote. I thoroughly believe in merit and fitness as applied to our civil officers whether elective or appointive. Notwithstanding that, I am opposed to this proposition, first, because I believe it to be purely legislative. Second, "so far as practicable," I believe does not mean anything. "So far as practicable by examination, which so far as practicable shall be competitive," means nothing but manipulation in political boards. I believe further, while agreeing with Mr. Tibbetts, that we owe a limitless debt to the soldiers and sailors of the late war, that we cannot afford to disgrace the State by paying them in depreciated currency, and that we owe the same duty to them, as far as merit and fitness is concerned, that we owe to any citizen. I vote no.

Mr. Ackerly—Mr. President, I desire to explain my vote. I am in favor of this last clause in regard to soldiers, and now adopted, and I am in favor of civil service reform generally, but I do not like the wording of the first

part of this section. I think it will do more harm than good. For that reason I am constrained to vote against it, and I vote no.

Mr. Bowers—Mr. President, I desire to explain my vote. For the first time since I have had the pleasure of considering with this Convention any proposed amendment that in form applied to the whole State, I have, to-day, the privilege of voting for such an amendment applying fairly and equally to all portions of the State. Every other amendment that has been pressed to the front that applied generally to the State was carefully worded so as to restrict the cities and put them, as was frequently stated, under tribute and under the control of the country, and has freed the country district from that supervision of the Legislature which ordinarily and properly should attach thereto. It was the intent evidently of the majority to pass this measure in the same way, but owing to the strange surroundings which existed in the Convention this morning, some of the majority voted for the amendment offered by Mr. Nicoll, whereby the soldiers and sailors in the villages shall be given the same preference as is given to the soldiers and sailors in the cities. I have not heard it stated before to-day, that the cities were set apart for the soldiers. Possibly they do most of all that work as they do all other good work. But having now reached a point in which these quartermasters and surveyor generals and those other country officials who went out in the last war, where they are equally protected, it affords me great pleasure to vote for this proposed amendment. I vote aye.

Mr. Countryman—Mr. President, in explaining my vote, I wish to say that I am a Republican, having voted and having given my first vote for the first Republican ticket that was ever elected or voted for in this State. But I declared my independence more than twenty years ago, and have acted independently of that or any other political organization ever since. I am also a Democrat, having been elected on the Democratic ticket as a member of this Convention, but with a distinct understanding that I came here to act independently upon all propositions coming before this Convention, and to give my vote on all questions without reference to its ef-

fect upon partisan interests or considerations. I am also a Mugwump, and have acted with that organization for many years, so far as it is organized, and expect to act with it in the future. I hope, Mr. President, that I am not an office-seeker bidding for votes here or elsewhere. Acting with any organization, I hope I am not a demagogue. I came here without wearing any collar, whether that collar is made by "papa," or is made by any political organization which "papa" directs or controls. I am not here for the purpose of keeping a list of members and giving them "the tip," and reporting them to "papa" as delinquents if they do not act as his party organization wants them to. I should be ashamed of myself if I occupied any such position on this floor.

Now, sir, I have some acquaintance with soldiers. I have very personal relations with some of them, as well as professional. I happen to have some very close relations with some of the soldiers who won very high distinction on the field, and who have since been recognized in very important positions in this State; men who were promoted to high positions because they were citizens of character and competent to fill those positions and competent to hold them, and not simply because they served in the army and have no merit of fitness. Now, I vote against this proposition, because I think it involves a principle, because I think it is wrong and sets a precedent for the future. I admit that in some respects it has been modified so as not to embrace all soldiers, who have heretofore or may hereafter serve in the army, but you are setting a precedent for the future and you are engrafting into the Constitution a provision which is utterly at war with the principles of a Constitution. I vote no.

Mr. Crosby—Mr. President, I desire to explain my vote. I am opposed, sir, to the doctrine of civil service reform, so-called. It is contrary to the principles of our government. Under our system of government every man is a sovereign. Every place in the nation is open to all who fit themselves for such position. The abolishment of the laws of primogeniture and entail has made it impossible for the first born of families to provide places in the army, the navy and civil service for the other members of the family. Under our laws the male members of a family, young or old, are on the

same footing. Such legislation has a tendency to create an official class like office holding in the army and navy. Men become time-servers and wait for those higher in rank to die or become disabled. There will be no places open for the active, energetic, uncompromising, intelligent American citizens, and when they shall be crowded out, when there is no opportunity for them by their fitness to command and secure positions, they will lose interest in the affairs of government. When that time comes, when the public cease to be vigilant, dishonesty and incapacity will develop in the public service, and there will be danger to our institutions.

I am opposed to this legislation upon another ground. It is absolutely impossible to enforce it, and to hold a party responsible for the management of the affairs of government. Under our system of government the majority rules, and if the party in power cannot control the appointees, if it cannot regulate the management of the affairs of the government, it cannot be held responsible for the conduct of the government.

I am opposed to it, because if made applicable to every town, city and village, it will be impossible for the head of a department, for the chief in an office, to control the business of the office. If a man is competent and peculiarly fitted to discharge the duties of any position in any department, he can be retained under the laws as they are, but if we adopt this and compel the Legislature to apply this legislation to the minor offices of cities, towns and villages, a public officer cannot manage his own department, and cannot be held responsible by the party who elected or appointed him. I am ready to take care of the old soldier, but he can be taken care of without this proposed amendment. It is legislation. It is the province of the Legislature, and not for this Constitutional Convention, to regulate.

The President—Mr. Crosby's time is up. How does he vote?

Mr. Crosby—I vote no.

Mr. Dickey—Mr. President, I had great doubts as to how I should vote upon this question, but after the only mugwump in the Convention voted no upon this question, I vote aye. (Laughter.)

Mr. Goeller—Mr. President, I desire to explain my vote. Belonging, as I

do, to the Democratic party, and being disposed to vote upon this measure, I desire to declare that I am not so voting because I am a Democrat, nor is it owing to the fact that I am a member of the Tammany organization of the city of New York. Nor is it owing to the fact that occasionally there is a consultation between the members of that organization which Mr. Countryman referred to but a moment ago. I am swayed by my readings in the last few years, and believe that in every measure coming up in any assemblage, be it the Assembly of the State of New York, or the Senate of the State of New York, or the Constitutional Convention of the State of New York, or in the House of Congress of the United States, there is a decided disposition on the part of the Democratic party and of the Republican party to harmonize and to do all that can be done for the veterans in the late war. For that reason, Mr. President, being desirous of voting upon this question, and for the reasons as stated, I vote not because I am a member of the Democratic party or of the Republican party, but being an admirer of the services rendered by the soldiers of the late war, and believing that this measure benefits them, I vote aye.

Mr. A. H. Green—Mr. President, the provision that has been made for the Union soldiers and sailors seems to be quite satisfactory, but the first part of this section is quite incomprehensible to me in its probable workings. If it means that there is to be competitive examination by a board of commissioners or examiners, as we have had, if it means the machine civil service which we have had and which seems to have operated as a mere fraud and humbug, I am opposed to that civil service method. But if it means merit and fitness to be applied by the head of a department to his subordinate, then I should favor the amendment. But it seems to be very indefinite as to what it means (perhaps I might say that you can indulge in either construction, but it don't seem to be very definite); I am opposed to establishing in the community any class who are exempt from the casualties of life, and who have nothing to do but do their duty in their way and receive their pay. I am opposed to having any class in the community in that way. I vote against it. I vote no.

Mr. Hawley—Mr. President, I am not at all discontented with the phrase-

ology in which the last sentence of this proposed amendment has now been put. But the whole matter is purely legislative matter, and the first sentence of this proposed amendment is nothing but a collocation or words with which any adroit politician can juggle as he chooses. It affords no protection whatever to the cause of civil service reform. It is an open door to every kind of fraud upon civil service reform which anybody desires to practice. Examinations are to be "so far as practicable," and fitness and merit are to be considered "so far as practicable." Of what force and effect in the purification or elevation of the civil service is any such form of words is that? This provision is infinitely inferior to the safeguards of the present statutes of the State. It shows that the question had better be left to the Legislature than to this Convention. I vote no.

Mr. Holcomb—Mr. President, I would like to explain my vote. It seemed to me, as I read the first few lines of this proposed article, that there should be some safeguarding in respect to appointees or promotions to fiduciary or confidential places. I have been minded to make a suggestion in that behalf, but I think, differing with Mr. Hawley, that the words "so far as practicable" would leave the Legislature to take care of such places. It is evident that fiduciary and confidential positions should be exempted. I, as a Democrat, believe my party did everything that could be done during the war to preserve the Union. I am perfectly content with the record of the Democratic party during the war. Especially am I proud of the record made by the Democratic party in the city of New York and the organization which I, in part, have the honor to represent, during the war. Nothing can be done which can be considered too much for the soldiers. Nothing that can be done will ever reward them for the suffering and privation they underwent in the war between the States. I do not consider that they come here themselves, asking that they shall be exempt from the provisions of the civil service, or that they shall be hoisted into office because they may have had some connection either with the naval or military service in the war. But, notwithstanding, they are entitled to the preference, in accordance with the suggestion made by Mr. Cochran and passed by the Convention, and because I consider the words "so far as prac-

ticable" cover and sufficiently safeguard the suggestion which occurred to my mind in respect to the fiduciary and confidential positions, and because I think the soldiers are entitled to exemption, I vote aye.

Mr. Lincoln—Mr. President, I am a member of the select committee on civil service, and believe generally in some of the principles of the so-called civil service reform. I listened very attentively to gentlemen before our committee representing the Civil Service Association of the State, and came to the conclusion that the amendment which that association preferred would be a safe provision to put into our Constitution. That provision is not before us, and I am opposed to this proposed amendment as it stands, especially with the additions made by the amendment suggested by the gentleman from New York (Mr. Nicoll).

I am astonished that so many members of the Convention have already voted in favor of it. It seems to me utterly absurd and indefensible to undertake to put into the Constitution this proposed amendment in the shape that it is now. I have nothing to say in regard to the old soldiers, because I am as friendly to them as anybody. It is on other grounds that I oppose the entire amendment. This amendment as it reads is imperative. It compels promotion and appointment in accordance with the rules laid down in this amendment, and simply imposes on the Legislature the duty of providing the machinery for carrying it out. Now, that means that you must have a civil service commission in every subdivision of the State, even in the highway districts where pathmasters or overseers of highways are appointed by the highway commission. There must be a civil service commission in every school district. There must be a civil service commission in every town, because there are certain town officers under the law as it is now who are appointed instead of elected. Then, again, suppose a vacancy occurs in one of the higher offices. For, instance, in the Supreme Court, by the election of a Supreme Court judge to the Court of Appeals. Some person is appointed to fill that vacancy. Does it belong to the civil service or the State? Is the judiciary a part of the civil service of the State. Then, again, what means shall be devised to determine the fitness of an appointee to fill the vacancy on the Supreme Court bench

when a Supreme Court justice has been elected to the Court of Appeals, or the judgeship becomes vacant by death or resignation? I say this is too sweeping. It goes too far. I am opposed to putting it in our Constitution. I vote no.

Mr. Maybee—Mr. President, I desire to explain my vote. The only proper place for civil service reform is in party platforms or in the Legislature. I vote no.

Mr. McClure—Mr. President, I rise to explain my vote, mainly because it appears in the suggestion made by Mr. Lincoln, and which has caused a great many to vote against this proposition, and I thought a suggestion from me might help to turn the tide. It seems to be so objectionable to many of our country friends because it is just and fair, and a great many suggestions are made. The men who hold these local offices might be subjected to a great deal of trouble, but the trouble which will come to the officers in cities is of no account. I am not generally in favor of civil service reform when they give questions on ancient history to plumbers. But I want to emphasize and have placed in italics what has been brought out in this debate. It appears as a fact that the Democratic party alone of the two great parties elected a man to this Convention upon the distinct understanding that he was to act independently in this body, something that the party is entitled to glory in. I want to have it marked in letters of living life in the records of this Convention, and that the man so elected in this Convention had the courage to vote independently here and was not called to account by any caucus for so doing.

Mr. McIntyre—Mr. President, I do not think we need this amendment in the Constitution. You have on the statute books now a law in relation to civil service, and also in relation to the soldiers. You cannot have soldiers much longer, and I do not think we had better put them in the Constitution. I think it is better to leave this entirely out, and, therefore, I vote no.

Mr. McKinstry—Mr. President, I do not believe with my colleagues, Mr. Lincoln and Mr. McIntyre. I believe this amendment is necessary, since this Convention has already adopted an amendment that our village pound-keeper cannot take a free ride on a

railroad, under penalty of a criminal prosecution, and I believe he should be immediately examined in regard to his moral and literary qualities, unless he be caught riding on a free pass, and thus disgrace our village. I vote no.

Mr. Mereness—Mr. President, I desire to briefly explain my vote. I think the only standard for holding public office should be the old standard: Is he competent, is he able, and is he honest? In addition to that, I live in a county where all the offices, commencing with the county judge and surrogate down to the minor offices, are held by veterans of the late war. In fact, every office in our county. Whenever a veteran has presented himself as a candidate, he has always received the nomination at the hands of the party to which I belong, and has been elected. I wish to say that I am in entire sympathy with that election.

I will add further, personally, that I have a brother sleeping in the South lands, killed by the guerillas, and another we have never heard from, and a third one who is home with an honorable discharge. Notwithstanding that, I regard this as purely administrative and legislative. And further than that, I regard it as the veriest buncombe, and for that reason I vote against it. I vote no.

Mr. Nicoll—Mr. President, I would like to say a few words in explaining my vote, on account of the remarks made by Mr. Lincoln. It is very evident now that this salutary measure is about to be defeated by the votes of the majority of this Convention. The record of the roll-call down to my name in the middle of it shows that for some reason or other they have changed front upon this measure, and are about to stab civil service reform and the cause of the old soldier to the heart. Now, Mr. President, as this matter stands now, it, undoubtedly, does express, or is supposed to express in the Constitution of the State, what I believe all good citizens desire, and that is, some method of appointment to office by ascertained merit and fitness, and it also provides that upon the roll of application the honorably discharged soldier and sailor shall have preference, for reasons I sympathize with. That being the situation, I arose and proposed an amendment to the amendment, and the proposition introduced by the committee, simply ex-

tending the wholesome and salutary provisions of this proposition to the towns and villages of this State, and, lo and behold, as soon as I do that every man from a town or village gets up and votes against it. That is, we are willing that you should have civil service reform in the cities and that your appointments should be made on the ground of merit and fitness ascertained by examination, and that we are there willing that soldiers and sailors shall have preference, but if you touch our towns and villages or dare to apply that principle to us, we will vote you down, and that, I regret to say, is going to be the fate of this amendment. I regret, Mr. President, that I offered my amendment. If I could withdraw it now, I would withdraw it, but I am bound by it. Without it, I believe this measure would have passed and we would have got the benefit of it in the cities.

The President—How does Mr. Nicoll vote?

Mr. Nicoll—I vote aye.

Mr. O'Brien—Mr. President, I came here prepared to vote for a good straight forward declaration of fitness and merit, in appointment to public office, but this measure has been so kicked and buffeted about upon this floor that, notwithstanding I commiserate with my Democratic friend at his loss, I vote no.

Mr. Root—Mr. President, I wish to explain my vote. I am in favor of this amendment because I believe it puts into the Constitution a principle, one of the most salutary of recent advancements in government. I believe in regard to that principle just what President Grant believed when, in his message to Congress in 1870, he recommended a provision for civil service reform, and said of civil service: "I would have it govern not the tenure but the manner of making all appointments." And said further: "The present system does not secure the best men and not even fit men for public office." I am not willing to stand, and I should regret to see my associates stand, upon any lower ground than that best and warmest of friends occupied twenty-four years ago. I believe, sir, that this principle ought to be incorporated into the Constitution because it is right, and because I do not regard the words of party platforms as being mere buncombe, to be disregarded at

will. Whatever may be the practice of the gentlemen that have been amusing themselves by sneers to-day upon the other side of the chamber as to regard for their party platform, I believe, sir, in the civil service plank of the platforms to which I have given my adherence in years past, and shall vote accordingly to-day.

I think, sir, we should adopt this amendment for another and practicable reason. As the matter stands to-day, the court of last resort has ruled that the principle of civil service cannot be applied to the important positions in the State prisons and public works department, and the effect of this amendment will be to extend this reform to State prisons and canals, and it will complete the adoption by this Convention of the recommendations of the prison commission, which were that by constitutional amendment the system of contract labor should be abolished and the State prisons be taken out of politics. For these reasons, Mr. President, I am for the amendment as it stands, and I vote aye.

Mr. Spencer—Mr. President, this proposition seems to have drawn to its favor from the clause inserted in reference to preference to be given to Union soldiers, and a vote against this proposition has been construed as a vote against the soldier. I do not so regard it. I am content with the preferences that have been given by existing law to the soldiers. And I suppose that each party, so far as partisanship is concerned, is willing to stand upon its record of what it has heretofore done for the soldiers, and the question of partisanship could have but little effect here upon this proposition. I am also favorably inclined towards civil service examination as helping certain departments of government, departments of the United States and State government where there are large number of appointees, and where the employments have some degree of permanency; but to apply it, as this proposition does, to every office in the State, whether it is a permanent one or not, the towns, and villages where there are provisions now for such examination, it seems to me that we are carrying a very laudable and proper reform to an absurd conclusion. Civil service examinations are proper in their proper place. We should not make them absurd and ridiculous by applying them to places where they have no just or proper application. I

am also opposed to this proposition for the reason that I do not know what it means. I have sought diligently to understand its meaning, and it is beyond my comprehension, or, to speak more clearly, I do not understand just where and how it applies. I am content with the provisions of law as they exist, and if there is anything in the present Constitution in relation to canals and State prisons, it would have been very proper to have made the changes in the articles relating to those matters. I am sorry that that question comes up so late in the day, but in spite of the arguments that have been made in reference to this matter, I cannot bring myself to vote for a proposition of this character, and I, therefore, vote no.

Mr. A. B. Steele—Mr. President, hailing from the village rather than the city, I favor this amendment. I care not whether an important amendment has come from the minority or the majority. I believe the proposition is something that should extend throughout the whole State, and, therefore, I vote aye.

Mr. Storm—Mr. President, I somewhat regret that our distinguished friend, Mr. Root, has explained his vote for me, because I had concluded to vote no, and shall vote no now notwithstanding his remarks; but after listening to the remarks of Mr. Nicoll, and in response to his remarks, and in the high esteem in which I hold him as a friend and neighbor, I vote aye.

Mr. Tibbetts—Mr. President, the first thing I want to do is to correct my vote. I voted on Mr. Kimmey's name by mistake.

Now, on this proposition, speaking for the soldier and the friend of the soldier, I say we take no pride in this proposition. We shall lay up nothing against this Constitutional Convention, and it will not lose a vote if we defeat it. We are satisfied as matters are.

Mr. Nicoll—What?

Mr. Tibbetts—We are satisfied as matters now are. With the amendment which Mr. Nicoll has added to it, I feel that it has so loaded down and complicated the machinery for appointments in this State that you have gone too far. There is a good deal of good about it, more good than evil. I suppose, in doubt as I am, I must vote aye.

Mr. Vedder—Mr. President, I ask to be excused from voting and will briefly

state my reasons. It was sublime to see Mr. McClure from New York attempt to stop the tide, as he called it, against this bill, or if I may be allowed to borrow again from Mr. Jenks, he took the place of that Danish King Canute, and said to the waves: "Thus far thou shalt come and no further." He has also found some use for a Mugwump, because he said he desired to stop this tide by appealing to the only Mugwump in this Convention. It is the only use I have every found for a Mugwump, to stop the rising tides. He is to be congratulated.

Mr. President, if this amendment simply ordained that there should be civil service in the State, I should vote for it, but it goes further and entrenches upon the domain of the Legislature, and says in what departments we shall have civil service in the State. So far as the old soldier is concerned (and I am one of them), I was content and satisfied as the law now is in reference to the civil service of the State, as Mr. Tibbetts has stated. We have a civil service law in this State. It was experimental, and is experimental still, and to engraft upon the Constitution that we shall have it in every town and village of the State where it is impracticable, I am against it. There has to be a great deal done to make this civil service law practicable. Under the manipulations of the senior Senator of this State it was made to suit partisan ends. We have got to have something besides that. Now, with this tentative law we have upon the statute books, let it remain as it is and not affix upon the people of this State this impracticable provision which will last for twenty years; and if the gentleman from New York (Mr. Nicoll) had desired to defeat this measure and all our work before the people, if he had (I do not know that he had) he builded much better than he knew when he had this amendment incorporated into the proposed constitutional amendment to-day. That is the effect of it, whether he intended it or not. I withdraw my request to be excused from voting and vote no.

Mr. Becker—Mr. President, this caps the climax, if this amendment is defeated. You allow the gentlemen to come in here with their nickle-plated cheek and load it down with material which he comes forward again and tells you has very wide and far-reaching application, and you lose sight entirely of the fact that the words "so

far as applicable" is in your amendment which we have, puts it in the power of the Legislature to do as they see fit, to extend it as far as it sees fit. I believe patronage is the curse of political parties in this State. I want to see this civil service law extended so far as practicable, even to the towns and villages. For that reason I am in favor of the first principle.

As to the second principle, in regard to soldiers and sailors, it is the principle which every decent man pursues in his own business, no more nor no less. If I have a number of men come to me in my business and they are all competent, and one of them is a soldier, he is the one that is going to get the job. (Applause.) That is the principle which is in this bill. It does not go as far as the provision that was introduced that they shall be preferred above all others, no matter whether they are competent or not. I hope this bill will pass. I do not see any trouble about it or any reference to pound-masters or judges. The Legislature will say how far it is practicable, and I think that Mr. Nicoll, in his effort to ball up this Convention, has got himself balled up.

Cries of "Vote," "vote."

Mr. Becker—I vote hesitatingly aye.

Mr. Cornwell—Mr. President, I certainly believe it would have been the part of wisdom on this side of the house to have stood by the traditions of the Republican party and voted as a unit for this measure. The bill, without doubt, could have been improved, especially in applying its provisions to villages and towns, which should not have been done; still, on account of the second section, which is in the interest of the Union soldier, we cannot afford, as Republicans, to go back on the record of the party, which has stood, under one and all circumstances, as the friend, not only of the Union, but also of its defenders.

I am in favor of civil service, so-called, and also in favor of almost any honorable proposition favoring the Union soldier. I consider this proposition in that line, and sincerely hope it will prevail. I vote aye.

Mr. Davies—Mr. President, I think there is a good deal of rot in this proposition. I think it is too broad and far reaching in its effect. Notwithstanding, there are some features

about it which strike me very favorably, especially that feature regarding honorably discharged Union soldiers, and on that account, and on that account alone, I vote aye.

Mr. Lauterbach—Mr. President, I desire to explain my vote. When Mr. Nicoll announced last night that owing to the glorious home rule bill as passed he intended to change his residence from New York to some place in Suffolk county, it was natural enough to suppose that, with his intellect and ability sweeping down upon some village on Long Island, he would usurp all the offices in the place at once. I think that he introduced this amendment simply on account of his modesty, so that before taking possession of the offices an examination could be had into his mental capacity. In behalf of regularity and order in the appointment of State prison officials and others, as to whom our attention was called during the process of the investigation by the charities committee, I think it would be a serious error on the part of this Convention if, owing to any flippant spirit in which the matter has been considered, or on account of some local interest that might be prejudiced, we should go to the people from this Convention, while our party has announced itself in favor of civil service reform, that in this Convention, upon a trivial excuse that was presented, we voted it down. I, therefore, vote aye.

Mr. Putnam—Mr. President, I desire to explain my vote. The provision, as presented, does not meet my entire approval. Nevertheless, I believe that the question of what shall be practicable can be safely left to the Legislature. I think that the gentlemen from the rural districts, who fear that their path-masters or their road-masters shall have to pass a civil service examination if this proposition shall pass, err in their judgment of what the Legislature may deem practicable. The one great benefit that will be derived from the passage of this bill will be that it will prevent an unfriendly Legislature from repealing the present laws. I, therefore, vote aye.

Mr. Kellogg—Mr. President, inasmuch as I expect a hod carrier in my office will want to take a civil service examination, and I come from a hayseed country, I change my vote from the negative to the affirmative.

Mr. Powell—Mr. President, my vote was cast in the negative under a mis-

apprehension, and I desire to change it to the affirmative.

Mr. Porter—Mr. President, I desire to change my vote to the affirmative.

The President—This constitutional amendment having received a majority of all the votes of the members elected to this Convention is duly passed.

The vote in detail is as follows:

Ayes—Messrs. Acker, Arnold, Baker, Banks, Barhite, Barnum, Becker, Bigelow, Blake, Bowers, Brown, E. A.; Brown, E. R.; Burr, Cady, Campbell, Carter, Clark, G. W.; Coleman, Cookinham, Cornwell, Davenport, Davies, J. C.; Deady, Deyo, Dickey, Doty, Durfee, Fitzgerald, Floyd, Foote, Francis, Frank, Augustus; Fraser, Fuller, C. A.; Galingier, Gibney, Gilbert, Gilleran, Goeller, Goodelle, Green, J. I.; Hamlin, Hedges, Herzberg, A.; Hill, Hirschberg, M. H.; Holcomb, Holls, Hotchkiss, Hottenroth, Jenks, Johnson, I. Sam; Kellogg, Kinkel, Kurth, Lauterbach, Lewis, M. E.; Marks, Marshall, McClure, McKinstry, McLaughlin, J. W.; McMillan, Meyenborg, Morton, Mulqueen, Nichols, W. H.; Nicoll, De L.; Nostrand, Ohmeis, Parker, Parmenter, Platzek, Porter, Powell, Putnam, Roche, Rogers, Root, Schumaker, Smith, Springweller, Steele, A. B.; Steele, W. H.; Storm, Sullivan, W.; Tekulsky, Tibbetts, Titus, Truax, C. H.; Truax, C. S.; Veeder, Wellington, Whitmyer, Williams, Woodward, President.—97.

Noes—Messrs. Abbott, Ackerly, Alvord, Barrow, Cassidy, Chipp, Jr.; Church, Cochran, Countryman, Crosby, Danforth, Dean, Deterling, Durnin, Emmet, Faber, Farrell, Frank, Andrew; Fuller, O. A.; Green, A. H.; Hawley, Hecker, Jacobs, Johnson, J.; Lester, Lewis, C. H.; Lincoln, Lyon, Manley, Mantanye, Maybee, McArthur, McCurdy, McDonough, McIntyre, McLaughlin, C. B.; Mereness, Moore, O'Brien, Parkhurst, Pashley, Peabody, Peck, Phipps, Pool, Sandford, Spencer, Sullivan, T. A.; Towns, Tucker, Turner, Vedder, Vogt, Wiggins—56.

The President—The next amendment in order is third reading, No. 29, printed No. 417. The secretary will read the title.

The secretary read the title as follows:

"Proposed constitutional amendment to amend section 7 of article 1 of the Constitution, so as to include therein

the right to construct and maintain necessary drains and ditches for agricultural purposes across the lands of others."

Mr. E. R. Brown—Mr. President, at the time this matter was in committee of the whole I made a simple amendment by which dikes, as well as ditches and drains, be included in this amendment. It commended itself to the committee that reported it and to other gentlemen interested in agricultural affairs who considered it. Other amendments were offered at the same time, and it became so clogged with foreign matter that I withdrew my amendment. I do not offer it now with the purpose of awakening debate, because I do not think it should take up the time of the Convention, but I make the motion to recommit it with instructions to report forthwith as follows:

The President—Mr. Brown, will send his amendment to the desk. The secretary will read.

The secretary read Mr. Brown's amendment as follows:

In place of lines 3, 4, 5, 6 and 7, insert as follows: "General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof necessary drains, ditches and dikes on the lands of others under proper restrictions and with just compensation, but no special law shall be enacted for such purpose.

Mr. A. H. Green—Mr. President, I desire to offer an amendment.

The President—The secretary will read Mr. Green's amendment.

The secretary read Mr. Green's amendment, as follows:

Strike out the words "as shall be prescribed by law," and insert the words "or by a jury at the option of the person whose property is taken, which compensation, together with the expenses of the proceedings, shall be paid before the property is taken."

Mr. E. R. Brown—Mr. President, I accept that as part of my motion to recommit. It is a proper precaution in the interest of those whose property is to be taken.

The President—The amendment of Mr. Green is accepted by Mr. Brown.

Mr. E. R. Brown—Mr. President, there seems to be a misunderstanding in reference to the amendment proposed

by Mr. Green. Mr. Green's amendment places the right to take lands for the purposes of drains, ditches and dikes upon the same basis that it is now placed in regard to private roads, and it has no reference to anything outside of ditches, drains and dikes, and it is, therefore, not objectionable.

Mr. Schumacher—The law is so at the present time. You cannot take a foot of land in the country unless you pay for it. It is so now.

Mr. E. R. Brown—Mr. President, I withdraw my consent to accept Mr. Green's amendment, as I find it is not acceptable to the large majority of the members here who are in favor of this proposed constitutional amendment.

Mr. Hottenroth—Mr. President, I think Mr. Brown will accept my amendment, which is to insert in line 7, page 1, after the word "record" the words "at least one of whom shall be accepted by the property owner."

Mr. President, it seems to me that in cases of condemnation for drains or private roads, or in any case where a municipal corporation or any individual by a statutory provision obtains the right of eminent domain, that in any such case the owner should have the right to select at least one of the commissioners. That right has been exercised from time immemorial, but recently, in an enactment by the Legislature, probably by oversight, possibly not, that right, which was an existing right was omitted, and the right was given to a corporation to select all three, or at least the court to select all three without the right of petition on the part of the property owner. Now, he might not exercise that right, but, at least, we should give it to him, so that in case an opportunity should be desired, it could be had by such property owner. I think, also, Mr. Chairman, this might be amended to advantage by providing that wherever these drains are to be built or property taken, payment should be first made by those who desire to obtain it. Now, there may be cases where this is inadvisable, or at least impracticable. In such case, it seems to me, that the court having jurisdiction of the proceedings should determine the advisability of requiring payment in advance. Some provision should be made to restrict the indiscriminate taking away of a man's property without compensation therefor, to be paid within a reasonable time.

The President—The secretary will read Mr. Hottenroth's amendment to the amendment of Mr. Brown.

The secretary read Mr. Hottenroth's amendment, as follows:

Add the following paragraph: "When private property shall be taken for public use for the construction of drains, the compensation and damages shall be first paid, unless the court having jurisdiction of the proceedings shall, upon a hearing of the persons interested, deem immediate acquisition necessary. If the necessity is established to the satisfaction of the court, it shall thereupon grant to the owner such immediate or partial relief as justice requires. Notice of all proceedings shall be given to the owners in the manner prescribed for the service of process in the Supreme Court of this State."

Mr. Parker—Mr. President, I firmly insist that I shall be heard upon this proposition. I did not ask it before, but I do ask it now in view of what happened in committee of the whole when this proposed amendment was under consideration. I do now ask in the interest of the farmers of this State to be heard with reference to this proposition. When it was before the committee of the whole several gentlemen in this house undertook to kill it entirely by adding amendments that wholly destroyed its usefulness as applied to the farmers and destroyed its meaning and application in every instance. What I shall say will be in respect to the bill as I offered it, the bill which was reported unanimously favorably from the committee to which it was referred, and which was reported from the committee of the whole and ordered to a third reading. As I have always been very considerate of the time at the disposal of this Convention, and as that time has now become more limited and precious than ever before, I will only add a very few words to what I have already said regarding the merits of this proposed amendment.

I conceive there is no subject upon which this Convention has taken action of more practical importance, one which concerns and favorably affects the interests of a greater number of our rural citizens, than this proposition. The progressive farmers of this State have long labored under the disadvantage entailed by the deficiency in the present Constitution. It

may possibly be said that no man would object to having his farm underdrained, or surface ditched at the expense of his neighbor, but, in fact, such is the perversity of human nature that in many instances, altogether too numerous, various persons do so object, and by so doing cause serious delays, and oftentimes an utter failure of the desire and efforts of the enterprising farmer to properly improve his land. In many other instances the selfish land-owner, knowing his advantage, will make the most of the situation, by demanding damages altogether out of proportion to what could by any possibility be deemed equitable.

Now, it is to meet just such cases, and to allow the exercise of that right, under proper regulations, with just compensation in all instances, that this amendment is asked for by the earnest and progressive farmers of this State, and I do hope, and I appeal to the delegates here, not to lose sight

of the merits of the original proposition, whatever may be the merits of the amendments proposed to it. I ask for it now, and the farmers of this State want nothing more or less. I happen to know something of what the farmers want, having been a farmer all my life and am a practical farmer to-day.

Mr. Mulqueen—Mr. President, I desire simply to say one or two words in opposition to the amendment proposed by Mr. Green. Mr. Green's amendment is to the effect that no private property shall be taken until compensation is paid to the owner. Now, under that, it would prohibit the authorities of the city of New York from improving the northern part of the city—

The President—Mr. Mulqueen will continue his remarks after recess. The hour of one o'clock having arrived, the Convention will stand in recess until three o'clock.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 135.

AFTERNOON SESSION.

Friday Afternoon, Sept. 21, 1894.

The Constitutional Convention of the State of New York met pursuant to recess, in the Capitol, Friday, September 21, at 3 p. m.

Vice-President Steele in the chair.

The President pro tem—**Mr. Mulqueen** has the floor.

Mr. Mulqueen—Mr. President, I will yield the floor for a moment to Mr. Deady, who wishes to offer a resolution.

Mr. Deady—Mr. President, Mr. Mulqueen is willing to yield the floor to me for the purpose of allowing me to offer a resolution.

The President pro tem—The Chair must hold that a resolution cannot be entertained until this business is disposed of.

Mr. Deady—Mr. President, I ask for a roll call in order to ascertain if a quorum is present.

The President pro tem—The secretary will call the roll.

The secretary called the roll, and the following delegates answered to their names:

Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Bigelow, Blake, Bowers, Burr, Bush, Campbell, Carter, Chipp, Jr., Church, Cochran, Coleman, Cookinham, Countryman, Davenport, Davis, G. A.; Deady, Deyo, Dickey, Doty, Durnin, Emmet, Faber, Farrell, Floyd, Foote, Forbes, Francis, Frank, Andrew; Fuller, C. A.; Fuller, O. A.; Galing, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H.; Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, M. H.; Hot-

tenroth, Johnson, I. Sam; Kimmey, Lewis, C. H.; Lincoln, Marks, Marshall, Maybee, McClure, McCurdy, McIntyre, McKinstry, McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, W. H.; Nicoll, De L.; Nostrand, O'Brien, Ohmeis, Parker, Parkhurst, Parmenter, Peabody, Peck, Platzek, Pool, Porter, Redman, Roche, Rogers, Root, Sandford, Schumaker, Spencer, Springer, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Tekulsky, Titus, Truax, C. H.; Tucker, Turner, Vedder, Veeder, Vogt, Wellington, Whitmyer, Wiggins, Williams, President.

The President pro tem—**Mr. Mulqueen** may now proceed.

Mr. Mulqueen—Mr. President, if the proposed amendments to this bill are adopted, they will, in my judgment, seriously retard the growth of the annexed district in the city of New York. The owners of property would have a right to demand a jury trial, and the city would not have the right to take property until compensation had first been made to the owner. Now, sir, within the next year there will be opened in the annexed district of the city of New York at least one-hundred and fifty new streets, each two miles in length, and if you allow only one hundred owners to each street, you would have nearly fifteen thousand owners; but it would be a safe estimate to say that there are five hundred owners on a street two miles long. Now, gentlemen, just imagine going in court to try all those cases before a jury! Why, we would be obliged to have three or four more

courts in the city. And then take the result of a jury trial. Suppose, if you please, that one jury should give to the owner of a piece of land fifty by one hundred feet \$1,000. Suppose the next jury should give to the adjoining owner of a similar piece of land \$3,000, and so on all the way along the street. Why, you would have confusion worse confounded. Besides, under the present law, the commissioners who are appointed to assess the damages are not bound by the evidence that is presented to them. They have the right, and it is their duty, to examine the property, and they generally do examine it more than once before coming to their conclusion. They go to men living in the locality and talk with them about the value of property there, and they consult real estate men. Imagine a jury of tradesmen, if you please, who live in the lower section of the city, and who have no knowledge of property in the annexed district, trying those cases. They cannot leave the jury box and go and examine the property. They are bound by the evidence presented to them. The judge will be compelled to charge that they must not go outside of the record of the case in making up their conclusions. In respect to this amendment of Mr. Green's, I have this to say. First, however, I must state that any amendment proposed by Mr. Green deserves consideration at the hands of this Convention. I know it is prompted by the best of motives, and I know he believes that, if adopted, it will benefit the people of the city of New York. But, sir, will it have that effect? To-day the law is, that when a city seeks to open a street it acquires title to that property ten days after the filing of the oaths of the commissioners. Of what benefit, you may ask, is that to the owner? I will tell you. We know from experience in the city of New York that just so soon as it is stated that the city intends to condemn certain property, that property is under a cloud, and it cannot be sold in the open market to advantage, because no man will buy into a litigation. It cannot be leased, because no one can tell whether the commissioners will make their report in a month, or in a year, or in two years. Meanwhile, the owner must pay the taxes; he must pay the interest on the mortgage, if there is one, and he receives no income from his property. Under the present law, ten days after the filing of the oaths of the commis-

sioners, the city acquires the title to the property, and from that day the owner receives six per cent interest on the amount that may be fixed by the commissioners as the value of his property. This interest runs, remember, not from the time the award is fixed, but from ten days after the filing of the commissioners' oaths of office. As to land upon which there are buildings, the title becomes vested in the city six months after the filing of the oaths of office, and the man's interest runs right along. I have known of cases in the city of New York where the city, in order to make necessary improvements, has decided to take certain buildings along a street so as to carry out those improvements, and at once that property became under a cloud; it could not be sold, and it could not be leased. The owner had to pay the taxes; he had to pay the interest on the mortgages, and he received no income from the property. Now, it was because of that evil that the present act under which condemnation proceedings are regulated in the city of New York was passed. Under the present act it is within the authority of the board of estimate and apportionment, as soon as an award is made, to decide that the owner shall receive his money. Under the amendment as proposed by Mr. Green, and also under the amendment of Mr. Hottenroth, these men could not get their money until the condemnation proceedings were at an end.

Mr. Marks—Mr. President, this section, as it is now proposed to amend it by the addition of a clause that the construction and maintenance of drains and ditches for agricultural purposes, is a taking of property for public use, does not contain the principle stated in my proposed amendment, No. 49, in general orders. My amendment introduces no new principle into our Constitution, and it cannot be styled an untried experiment. It proposes only to extend to those proceedings for taking property by private corporations for what is alleged to be a public use, one of the principles which lies at the very foundation of our government, that the right to a trial by jury shall be preserved, shall remain inviolate, and that no person shall be deprived of his property but by the judgment of his peers. In the march of progress of this State, whereby corporations continue to increase, in view of the changed condition of affairs as compared to the year 1846, when this sec-

tion was adopted, and the very many corporations which are now created by general laws, in view of their seizure and enjoyment of powers and privileges without right, and the schemes constantly devised by them to evade and violate the laws, I think we are justified in placing a stumbling block in their path, which, while it will have no disastrous effect upon the assistance which they render to the people in their onward march to greater improvements and greater prosperity, will have the effect of keeping private corporations in the path of rectitude so far as paying for property which they take is concerned. That amendment will have the effect of securing the rights of the people, and will place corporations on the same level and make them subject to the same laws for the ascertainment of damages which govern the people, and will have the effect of preventing corporations from circumventing their neighbors in these proceedings.

The objections thus far made are not such as can be considered sufficient for rejecting that proposed amendment. We are dealing with the rights and liberties of the people, and the objections made should not be permitted to stand in the way of giving to the people liberty, right and justice.

The objections made to the adoption of that amendment, that it might delay the building of the rapid transit road in New York city, and all other possible objections that can be urged, must be treated as trivial and insignificant, when we keep in view that well recognized and well-established elementary proposition, that the right to a trial by jury is a substantial right affecting the individual, upon which he must rely for the protection of his property, and the enjoyment of those other personal and property rights guaranteed to him by the Constitution. As to the possible disastrous effect of that amendment upon the building of the rapid transit road in New York, given as a reason by some delegates for refusing to support it, I will, in a few words, state my reasons for believing those objections to be utterly and entirely without the least foundation to support them.

The rapid transit act, chapter 752. Laws of 1894, sections 40 and 47, gives the city the right to enter and take possession of the property along the proposed route before compensation is made. The amendment would not be retroactive and would not affect the said right acquired by the city under that act, to enter into possession of the property before compensation is made, and to ascertain the compensation in the same manner provided by

that act, and by the commissioners, as provided in section 45 of the act.

The act, section 60, gives the city the right to take property for the public use mentioned in the same act, and for the purposes of a road, and my amendment expressly excepts all property taken for public use by all civil divisions of the State, and leaves the compensation to be made as the Constitution at present provides. The amendment makes no change as to the manner of ascertaining compensation when property is taken for public use by any city, town, county or village, so that all vested rights of the city of New York under that act, and all rights which might hereafter be given to the city by the Legislature as to acquiring property for such use at once, and to make compensation by commissioners afterwards, cannot be affected by that proposed amendment.

The Evening Post of New York, with which we may differ in politics, but whose able editorials command the respect of the community, on August 18, 1894, in speaking of what a Constitution ought to contain, says: "The primary purpose of a Constitution is to create and define a government. Its next is to secure personal and political rights, and establish a few of the great and fundamental principles of government. The right of trial by jury is a right affecting the individual. It is organic, and it is intended to be immutable as much so as that the United States shall guarantee to every State in this Union a republican form of government. Its abiding purpose is to guard the minority and the individual and to assure to all men a constitutional right and liberty which a transitory majority cannot evade."

As section 7 now exists, it is no guarantee to the people of the State that they shall have a jury trial. Governor Russell, in his address to the Yale law school in June last, said: "Popular rights" (of which I claim a jury trial is one) "as against the ruling power can only be intrusted to established written guarantees." I feel that many delegates who do not support that amendment, upon calm and deliberate reflection, when this Convention is a thing of the past, when their votes are beyond recall and reconsideration, when the heat of debate and the excitement attending the close of our work, and the anxiety to finish our arduous labors, has given place to calm, sober and deliberate reflection and deliberation, will feel that the reliable system of a jury trial should have been extended to these proceedings, and that the principle contained in my amendment, so fairly rooted and implanted in the hearts of the people, should have received their hearty approval.

Mr. E. R. Brown—Mr. President, I do not wish to take up the time of the Convention, but let us see the situation in relation to this amendment. The committee on preamble unanimously reported an amendment which would enable people to drain agricultural land. It came into committee of the whole, and it had to be ridden there with the amendment which Mr. Marks had introduced at the opening of this Convention, and which he has not failed to pursue every time any matter came before this Convention that would enable him to discuss it. I do not propose to discuss his amendment, but I do say that, in common fairness, having had his day in court, this matter ought to have its day in court, and that it ought not to be loaded down with a series of amendments here which are not germane to what this Convention is now considering. I was mistaken in relation to the amendment of Mr. Green when I accepted it. It is not germane. It purports to make a change in the old Constitution. This amendment is intended to make no such change, but simply to provide for another case by additional language. It is also true of the amendment offered by Mr. Hottenroth, that it is an amendment to the old provisions of the Constitution which this amendment does not seek to touch, but because by accident this proposed amendment in relation to the drainage of agricultural lands is attached to the old provisions in relation to the taking of private property and private roads, this occasion is seized upon to make another proposed amendment entirely foreign to the subject. I think this matter has been discussed enough. I think the amendments which have had their day in this Convention and have been rejected should be rejected again, and that the amendment which was offered by me, simply for the purpose of perfecting the measure which the committee intended to put before the Convention, should be adopted.

Mr. Marks—Mr. President, I offer this amendment.

The President pro tem—The gentleman will send his amendment to the desk.

Mr. Hottenroth—Mr. President, in reply to the gentleman from Watertown, I would say that this amendment, and also the amendment proposed by Mr. Green, are germane. It is here

intended to put into the Constitution a provision allowing condemnation proceedings in cases where they were never allowed before. If this Convention does pass upon that measure favorably, we ought to have added to it two additional safeguards to those people whose property it is proposed to take. In reply to the statement made by Mr. Mulqueen, as to the interference with the new streets in the annexed district of New York, let us assume that a street two miles in length is to be opened, involving the taking of a thousand pieces of property. Is not a jury just as competent to pass upon the value of that property as three commissioners selected by the court? The plan that will be adopted in this place will not be one where there is a jury in respect to every particular piece of property that is taken, but some law will be devised to conform to the provisions of this Constitution, when it shall have been adopted. There has been a disposition on the part of many members of this Convention to provide against the taking of property without giving compensation, and that is practically what is done under the statutes of this State to-day. A man is deprived of his property, not within ten days, as the gentleman from New York has stated, but within thirty days, in case there are no buildings upon it, and in three months, in case there are buildings upon it; he is deprived of the use of his property as soon as the municipality determines to come in and take possession. Now, that is an evil, and it works a great hardship upon the people who are able simply to have their own little home. The corporation steps in and takes the place from them, and they are thrust forth upon the street, with the promise that some day in the future the city will return to them adequate compensation. In answer to that, we have the statement made that the owner will get six per cent interest. Well, suppose he does. What good does it do him when he does get his compensation? I believe there are cases where a city or a corporation should have the right to enter upon and take possession of property. Public health might demand it. State policy might demand it. But we should fix upon some means of giving to those who are deprived of their property, something in lieu of it.

Mr. Peck—Mr. President, I have sent up to the secretary's desk an amend-

ment which provides that the effect of this section shall be extended to the necessary use of lands for the construction and operation of works serving to retain, exclude or convey water for agricultural, mining, manufacturing, or sanitary purposes, is hereby declared to be a public use. In other words, it is to enable the Legislature to have control of this matter so that if the prospect of the present development of water power to the generating of electricity shall be realized this State can reap the benefit of it. It does not require a Legislature to do any such thing, but it puts it within the power of the Legislature to meet the very probable necessities of the future, because, as I have said before, the generation of electricity by the burning of coal as fuel, is so expensive that we will not be able to compete with other States that do allow of the development of water powers for that purpose. I think, therefore, it is a very just and proper power to grant to the Legislature, which they may exercise if it shall prove to become what it promises to be. I am sure that this amendment ought to be engrafted into the Constitution. The Legislature ought, in this end of the nineteenth century, to have that power, at least.

Mr. Schumaker—Mr. President, for two months this summer Mr. Green, Mr. Hottenroth and Mr. Marks, in the committee on preamble and bill of rights, were after the various amendments which they have introduced into this Convention in this innocent little bill of Mr. Parker's, relative to the drainage of farm lands, mostly called for in the county of Jefferson. Now, sir, this Constitutional Convention has nothing to do with the laying out of streets and boulevards and parks. It is not thrusting at New York or at Brooklyn—the two targets which have been used here in this Convention all summer long; but it is all over the State, in every town and village of the State; and the cry has been, in our committee, that they want a jury to fix the compensation in these cases. Why, the Erie canal and the adjacent canals would never have been built, and many of the great State improvements never would have been made if the Constitutional Convention away back in 1821 had not abandoned the system of having juries entirely, but simply taking commissions appointed by the courts. What is the law now? A great many

men in this Convention have come to me and to my friend, Mr. Mulqueen, and asked us to explain to them the process of laying out a street. Why, a street is petitioned for in a certain locality by the property owners. They petition to the municipal authorities in the city, the common council. The common council hear them, and they consider the petition in committee of the whole sometimes, and sometimes the committee of the whole does not report favorably, and then they dismiss the petition, and sometimes they do report favorably, and then the petitioners apply to the court for the appointment of commissioners. In Brooklyn, the General Term of the Supreme Court appoints the commissioners. Then the commissioners take into consideration what the damage is that will be done to the property through which the street or boulevard runs, or wherein the park is located, and they lay an assessment, by direction of the Common Council, for the payment of these awards for damages, whatever they may be, and they also lay out a district in which the city shall pay for certain damages done to the property through which the street passes. Now, all that takes some time. The City of Brooklyn gives its credit to it, but the money for the improvement has to come from the assessment district, and usually the city issues what is called assessment bonds to pay the people along the line of the street or the boulevard or the park, and the city has the right of inspection of every piece of property. There is no such thing as poor families being ejected immediately into the cold. In the city of Brooklyn I know property that was condemned where the people lived on it right along for years and paid no rent. There are isolated cases of that sort, and there are, I suppose, isolated cases of damage done to the furniture in people's houses where they did not move and did not choose to be law-abiding. I must say that there is not a single improvement in the State that the amendment of Mr. Green would not block. There is not a boulevard or a park in the State that would ever have been built if it had had to wait to be adjudged upon by a jury. Why, there would be hundreds of jury cases on the docket, and there would be great delay, and sometimes a juror would be taken sick, and then the whole thing would have to be tried over again. Besides, there is no re-

port to the court on the matter, as there is in the case of commissioners. They report to the court, and then the lawyers argue, and if there is any disagreement which is to the injury of the owner, the court assigns a new commission for the purpose of trying it again.

Mr. McMillan—I sincerely hope that this Convention will not load down this proposition as it did the civil service amendment this morning. It is a simple, plain one, to afford facilities by which the people in agricultural districts can get rid of their surface water. It has not anything to do with storing water for electrical purposes. It has not anything to do with the Manhattan railway cases in the city of New York. It has not anything to do with reference to the laying out of streets in the annexed district of New York, and it ought not to be loaded down with these extraneous matters, and I hope that every one of these proposed amendments will be beaten.

Mr. Foote—Mr. President, I desire to call attention to what I suppose to be a printer's error in this bill, third reading number 29, consisting of the omission of the word "first" before the word "determine" in line ten. In the Constitution, as it stands to-day, the word "first" is found before "determine," and it may be a word of considerable significance in connection with that part of this proposition which relates to the laying out of private roads. Therefore, for the purpose of correcting that error, and to conform that part of the section to the Constitution as it stands to-day, I offer an amendment which consists of inserting that word "first" before "determine" in line ten.

The President pro tem—Mr. Foote asks unanimous consent to make his amendment. If there are no objections it will be made. There being none, it is so amended.

Mr. A. H. Green—I do not propose to detain this Convention but a moment. The assertion that these amendments are not germane to the main proposition here is ridiculous. When private property is to be taken for any public use, the compensation to be made therefore shall be ascertained by a jury, or by not less than three commissioners, as shall be prescribed by law." Now, is not private property to be taken for public streets, as well as for the purposes of drainage? To say that it is not germane is to show that

the man who makes the statement has no comprehension of what language means. Now, my desire is simply this: When a man's property is taken away from him by force, he should be paid for it before he loses the title. I have a case now in mind that has been running nearly three years in the hands of commissioners, and they have not reported yet. To say that these commissioners go around and examine the property and talk with the neighbors about the value of it is all nonsense. I know something about that. The delays in getting these compensations are very great. Until within the last eight or ten years, it has always been deemed unconstitutional to let the title pass before a man has got his money for his property, and I understand that there is now a case in the United States Supreme Court to see whether it is constitutional.

The President pro tem—The question before the Convention is upon the amendment offered by Mr. A. H. Green to the proposed amendment of Mr. E. R. Brown. The secretary will read Mr. Green's amendment.

The secretary read the same, as follows:

Strike out on page 1, section 7, in line 7, the words, "as shall be prescribed by law," and insert the words "or by a jury, at the option of the person whose property is taken, which compensation, together with the expense of the proceedings, shall be paid before the property is taken."

The President pro tem put the question upon the amendment of Mr. Green, and it was determined in the negative.

The President pro tem—The amendment next before the Convention is the first part of the amendment of Mr. Hottenroth.

The secretary read the same, as follows:

In line 7, page 1, insert after the word "record" the words "at least one of whom shall be selected by the property owner."

The President pro tem put the question on the amendment of Mr. Hottenroth, and it was determined in the negative.

The President pro tem—The question now is upon the motion of Mr. E. R. Brown, to recommit the proposed constitutional amendment to the committee, with instructions to amend and report forthwith as follows:

Strike out lines three to seven, on page 2, and insert in lieu thereof the following:

"General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof necessary drains, ditches and dikes on the lands of others, under proper restrictions, and with just compensation; but no special law shall be enacted for such purpose."

The President pro tem put the question on Mr. Brown's amendment; a count was called for, and it was determined in the affirmative, by a vote of 63 ayes to 43 noes.

The President pro tem—The question now before the Convention is upon the second amendment offered by Mr. Hottenroth, which the secretary will now read.

The secretary read the same as follows:

Mr. Hottenroth moves to further instruct said committee to amend as follows: Add the following paragraph:

"When private property shall be taken for public use, or the construction of drains, the compensation in damages shall be first paid, unless the court having jurisdiction of the proceedings shall, upon a hearing of the persons interested, deem an immediate acquisition necessary. If the necessity is established to the satisfaction of the court, it shall thereupon grant to the owner such immediate or partial relief as justice requires. Notice of all proceedings shall be given to the owners in the manner prescribed for the service of process in the Supreme Court of this State."

The President pro tempore put the question on the motion of Mr. Hottenroth, and it was determined in the negative.

The President pro tem—The amendment of Mr. Marks will now be read:

The secretary read the same as follows:

"Section 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, when required by the owner of the property, and if not so required, such compensation shall be ascertained by not less than three commissioners appointed by a court of record, as shall be prescribed by law. But the compensation to be made for property taken for any public use by any civil

division of the State shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening shall be first determined by a jury of freeholders, and such amount, together with the expense of the proceeding, shall be paid by the person to be benefited."

The President pro tem put the question on Mr. Marks' amendment and it was determined in the negative.

The President pro tem—The next amendment is that of Mr. Peck.

The secretary read the same as follows:

Add at the end of the section: "The necessary use of lands for the construction and operation of works serving to retain, exclude or convey water for agricultural, mining, manufacturing or sanitary purposes, is hereby declared to be a public use."

The President pro tem put the question on the amendment of Mr. Peck, and it was determined in the negative.

The President pro tem—The secretary will now read the proposed constitutional amendment through for the third time.

The secretary read the proposed constitutional amendment the third time.

The President pro tem—This proposed constitutional amendment having had three several readings, the question is now on its final passage. The clerk will call the roll; those in favor of its passage will say aye, and those opposed no.

The secretary called the roll, and the proposed constitutional amendment was passed by the following vote—ayes, 105; noes, 17.

Ayes—Messrs. Abbott, Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Bigelow, Blake, Brown, E. R.; Burr, Cady, Carter, Cassidy, Church, Clark, G. W.; Cochran, Cookinham, Cornwell, Countryman, Crosby, Davenport, Deady, Deterling, Deyo, Dickey, Durfee, Emmet, Faber, Farrell, Floyd, Foote, Forbes, Francis, Frank, Augustus; Fuller, C. A.; Fuller, O. A.; Galinger, Gibney, Giegerich, Gilbert, Gilleran, Goeller, Goodelle, Green, A. H.; Hamlin, Hawley, Hedges, Herz-

berg, A.; Hill, Holls, Hotchkiss, Jacobs, Johnson, J.; Kellogg, Kimmey, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lyon, Mantanye, Marshall, Maybee, McArthur, McDonough, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Mereness, Moore, Morton, Mulqueen, Nichols, W. H.; Nicoll, De L.; O'Brien, Parker, Parkhurst, Parmenter, Peck, Platzek, Pool, Powell, Putnam, Rogers, Root, Sandford, Schumaker, Spencer, Springweiler, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Sullivan, W.; Tekulsky, Truax, C. H.; Vedder, Vogt, Wellington, Williams, Woodward, President—105.

Noes—Messrs. Barrow, Bowers, Campbell, Chipp, Jr.; Dean, Doty, Green, J. I.; Hottenroth, Johnson, I. Sam; Manley, Marks, McCurdy, Meyenborg, Peabody, Titus, Tucker, Veeder, Wiggins—17.

President Choate resumed the Chair.

The President—I believe there was a motion offered by Mr. Deady, and ruled out because it interrupted the order of third reading. Mr. Deady may present it now.

Mr. Deady—Mr. President, I now offer the resolution as follows:

“Whereas, the committee of privileges and elections, and the committee on contingent expenses, have reported that the claim of delegates Harvey W. Putnam and Thomas A. Sullivan, for expenses and counsel fee in their contest for the seats awarded to them in this Convention, is a just and reasonable one, and

Whereas, it is the sense of this Convention that said claims should be paid, and

Whereas, the Convention questions its power to make an appropriation to pay said claim out of the present funds appropriated to the use of this Convention,

Resolved, That the matter be respectfully referred to the Legislature of the State with a recommendation that it provide for the payment of said claim.”

I think this recommendation is eminently fit and proper, for if we take no action at all, except the action refusing to pay, after we have audited it, it might place these gentlemen in a very embarrassing position before the Legislature. We simply recommend now to the Legislature that it will provide for payment. The joint committee audited the bill and considered it very fair and reasonable. I think it is one

of the most reasonable bills in a case of this kind that has ever been presented, and I think the least we can do is to recommend to the Legislature its payment.

The President—Was not some action taken upon this at the morning session?

Mr. Deady—The action this morning was, simply, that this Convention could not pay it.

Mr. Moore—Mr. President, if that resolution gives rise to debate, I would like to debate it, and, therefore, I would like to have it lay over.

Mr. Deady—I hope the gentleman will debate it now, if he wants to debate it at all.

The President—There seems to be no objection to your debating it now, Mr. Moore. I think, if it is laid over, it will be apt to be overlaid.

Mr. Moore—Well, sir, I have simply this to say: That I feel, if this is a just claim, and if it was proper and right to pay the salaries of those members, we should also pay the expenses of their contest. I do not presume to set up my opinion against that of Mr. Deady and the members of the committee on contingent expenses, but it seems to me very singular to pay these gentlemen their salaries and at the same time refuse to pay the legal expenses they have incurred in getting their seats in this Convention. If this matter is to be referred to the Legislature for its determination, then I think the matter of their salaries ought also to be left there.

Mr. Deady—I would inquire whether the gentleman voted this morning against the resolution to pay those men?

Mr. Moore—I do not remember about that now, sir. The most of the house this morning was in a state of mind unfavorable for reflection, and we have had an opportunity to reflect upon some things since.

The President put the question on the motion of Mr. Deady, and it was determined in the affirmative.

Mr. Lyon—Mr. President, I have several reports from the committee on contingent expenses to present.

The President—The gentleman will send them to the secretary's desk and they will be read.

The secretary read the same, as follows:

Mr. Lyon, from the committee on contingent expenses, presents the following report:

"The committee on contingent expenses, to which was referred the annexed claim of Edward M. Secor, a messenger of the Convention, for additional compensation of three dollars per day from May 23, 1894, on account of services performed by him in clerical work as committee clerk, would respectfully report: That in the opinion of three of the members of said committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper, and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge, and that the Convention has not the power to allow or pay said claim."

The President—What action will the Convention take upon this extraordinary claim?

Mr. Goodelle—Mr. President, I desire that that should lay upon the table, and I will call it up to-morrow morning. I make that motion.

The President put the question upon the motion of Mr. Goodelle, and it was determined in the affirmative.

The secretary read the following report from the committee on contingent expenses:

"The committee on contingent expenses, to which was referred the annexed claim of Albert B. Crumb, a messenger of the Convention, for additional compensation of three dollars per day from May 21st, 1894, amounting to the sum of \$351, on account of services performed by him in the Convention post-office, would respectfully report: That in the opinion of three of the members of said committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge and that the Convention has not the power to allow or pay said claim."

The President—What action will the Convention take in regard to this extraordinary claim?

Mr. A. B. Steele—Mr. President, I ask that that lie over and be disposed of to-morrow morning.

The President put the question upon the motion of Mr. Steele, and it was determined in the affirmative.

The secretary read the following report from the committee on contingent expenses:

"That the committee on contingent expenses, to which was referred the annexed claim of James W. Riggs, Eugene A. Curran, George W. Roderick, William M. Mullin and Thomas W. Fitzgerald, in the matter of the contest in the Sixth Senatorial district, being for the sum of \$3,000 counsel fee and \$100 disbursements, would respectfully report: That in the opinion of three members of said committee, Messrs. Faber, Green and Tekulsky, said claim is fair and reasonable to the amount of \$1,500 of counsel fee and \$100 costs and disbursements; and that in the opinion of three members of said committee, Messrs. Brown, Whitmyer and Lyon, said claim is fair and reasonable to the amount of \$1,000 and \$100 costs and disbursements; that Mr. Pashley, of the committee, was one of the contestees, and at his request was excused from voting."

The President—What action will the Convention take upon this likewise extraordinary claim?

Mr. Dean—Mr. President, I move that that lay upon the table.

The President put the question upon the motion of Mr. Dean, and it was determined in the affirmative.

The secretary read the following report from the committee on contingent expenses:

"The committee on contingent expenses, to which was referred the annexed claim of William H. Davis, William M. Wimans and Albert Winterson, for services and disbursements in connection with procuring witnesses before the committee on privileges and elections in the Second district contest, would respectfully report: That said claims are presented on behalf of the unsuccessful contestants in said contest, and ought not, in the opinion of the committee, to be allowed."

The President—What action will the Convention take upon this report?

Mr. Hedges—Mr. President, I move that the report be agreed to.

The President put the question on the motion of Mr. Hedges, and it was determined in the affirmative.

Mr. Charles H. Truax—Mr. President, I ask to be excused for this evening and to-morrow without pay.

The President put the question on granting the request of Mr. C. H. Truax, and it was determined in the affirmative.

Mr. Deady—Has the President forgotten the rule that a member cannot be excused except because of personal illness or that of some member of his family?

The President—The Chair assumes that the gentleman would not ask to be excused otherwise.

Mr. C. B. McLaughlin—Mr. President, I desire to move a reconsideration of the vote which was taken last night looking to the final adjournment of this Convention, and I do so for the purpose of offering a substitute. I have information from the committee on revision that it is not possible for them to engross and get the proposed amendments ready by Saturday night. The substitute which I propose to offer looks to an adjournment of this Convention to-morrow until such day as the committee on revision will be ready to finally submit to this body the Constitution as a whole, ready for submission to the people, and simply adds two general orders to be considered in committee of the whole, and no others. So that we can complete our work to-morrow, and adjourn to such day next week as this Convention may think proper, and then come back here and simply prepare that instrument for proper submission. I, therefore, move a reconsideration of the vote taken last night in reference to the adjournment of this Convention to-morrow.

The President put the question on the motion of Mr. McLaughlin, and it was determined in the affirmative.

Mr. C. B. McLaughlin—Mr. President, I now offer the following substitute:

"Resolved, That the Convention consider and dispose of all the proposed constitutional amendments now on the order of third reading, and also general orders numbers 48 and 73, and that no other proposed constitutional amendments be considered, and that the committee on rules be instructed forthwith to report a rule limiting the time of debate to thirty minutes to such amendments in committee of the whole. Also, a rule abolishing the rule permitting a delegate to explain his vote; and that such business be disposed of before adjournment on Saturday, September 22, and that a session of the Convention be held on Saturday

evening, if necessary, and that the Convention adjourn sine die as soon thereafter as the amended Constitution can be engrossed and prepared for submission to the people."

I will say, for the information of the Convention, that the general orders which it is proposed to consider have reference, first, to the pool bill so called, and next, to the State militia; the substance of the latter bill is that all able-bodied male citizens between the ages of 18 and 45, shall be included in and constitute the militia of the State.

Mr. Burr—Mr. President, I desire to offer as an amendment to the substitute offered by Mr. McLaughlin, that general order No. 27, relating to trusts, shall be added to the other two. Some weeks ago I took occasion to present to the committee on rules, a resolution which provided that this Convention should remain in continuous session until all the matters then on order of third reading were disposed of. That resolution was cast out of the committee on rules without any consideration whatever. Now, I cannot see that there is any fairness in moving away out of its regular order this anti-trust amendment. Sir, I have met before the individual known as King Caucus, and I recognize the strong lineaments which he bears just at the present time in this Convention, and I know it is not the order of the day that this amendment shall be reached or discussed; but, gentlemen, I beg leave to assure you that there is an omnipotent power higher than he that we will appeal to in November next.

The amendment proposed is a protest against the merciless power of concentrated capital, it raises a question of supreme importance to the people of the State, a question of intense interest to the great masses of the people who are least able to bear the exactions pressed upon them by monopoly in the form of trusts, or in whatever other form this ancient grievance may assume to hide its real nature.

These exactions press most heavily upon those least able to bear them, the farmer, the mechanic, the laborer and all those toiling millions who work for their daily bread, and who have grown restless and uneasy under the burdens they bear. The modern trust is as hateful as the old legal trust is gratifying, exemplifying, as it does, one of

the noblest faculties of the heart. Combinations of capital in the form of trusts threaten the welfare of the Republic to-day. They have grown superior to the law. How best to cope with them is a serious problem, which the wise and patriotic statesmen of the country are called upon to solve.

The trust has come determined to stay. It has determined to accomplish its selfish ends no matter what the cost. It controls the great staples of the country. It is born of rapacity and maintained by tyranny. It stretches out its tentacles—quietly and stealthily—until whole industries are in its grasp. It creates a monopoly by throttling all competitors. It grinds down those who furnish the raw material and supply the labor, and exacts the highest possible price from the consumer. It has become an impregnable citadel of capital. It employs the highest legal and business capacity to perfect and maintain its organization. It laughs at public opinion, rides roughshod over Legislative enactments, and baffles the law courts. It bridles newspapers with subsidies, and sends members to the Legislature and to Congress. It has agents in every Legislature, and legislative bodies become as pliable as wax in the hands of the modeler, under its powerful manipulation. It tampers with judges. It makes alliances with political leaders, and hires professors of political economy to defend its formation and its objects. We have seen it within the past month stalk into the Senate of the United States and prevent the passage of laws needed by the people, until it forced the highest legislative body in the land to yield to its imperative demands. It is no longer an interference with trade, it is a menace to political liberty. It is no wonder, then, as President Cleveland stated to Mr. Wilson, in his now famous letter of July second, on the tariff: "There is a natural democratic animosity to the methods of trusts and combinations." What a disgraceful state of affairs is revealed by the sugar inquiry report, recently submitted to the Senate, in which it is stated: "It is a matter of complete indifference to the trust what duties are levied on sugar, so long as the form is ad valorem, and a sufficient differential is given in favor of refined sugar. The sugar trust, by the evidence of its president and treasurer, has contributed freely to the State and city campaign funds of both parties, and their contri-

butions have been made in years when national elections were held. This is a thoroughly corrupt form of campaign contributions, for such contributions, being given to two opposing parties are not for the purpose of promoting certain political principles, but to establish an obligation to the giver on the part of whichever party comes into power. The trust does not give to political parties for the promotion of political principles in which it believes, but for the protection of its own interests as appears by the same testimony. The fact that it gives to both political parties is sufficient proof of the purposes of its contributions and of their dangerous nature. For these reasons, the undersigned have felt it important to lay before the Senate and the country the fact that the sugar schedule as it now stands is, according to the testimony, in the form desired by the trust, and to point out, also, the methods by which the sugar trust reached what it desired and obtained, a substantial victory."

Combinations of capital in the form of trusts or otherwise have been repeatedly condemned by the best legal minds and the ablest thinkers in the country. It may be well to hear what some of them have said. In the opinion rendered by Judge Gibbons in the case of the Whisky Trust, April, 1894, he said: "Trusts and combines should not exist. They and our Republican institutions cannot in their true force and virtue co-exist, because the excellence of our institutions depends upon the opportunity, influence and prosperity of the individual citizens, and the more wide-spread these opportunities and influences, and the more general this prosperity, the more perfect and stable is the government itself."

"A few things," says Judge Cooley, "can be said of trusts without danger of mistakes. They are things to be feared. They antagonize a leading and most valuable principle of industrial life in their attempt not to curb competition merely, but to put an end to it. The course of the leading trusts of the country has been such as to emphasize the fear of them, and the benefits that have come from its cheapening of an article of commerce are insignificant when contrasted with the mischiefs that have followed the exhibitions in many forms of the merciless power of concentrated capital. And when we witness the utterly heartless

manner in which trusts sometimes have closed manufactories and turned men willing to be industrious into the streets in order that they may increase profits already reasonably large, we cannot help asking ourselves the question whether the trust as we see it is not a public enemy; whether it is not teaching the laborer dangerous lessons; whether it is not helping to breed anarchy."

Says Sherwood, C. J., in *Richardson v. Buhl* (77 Mich., 632): "The sole object of the corporation is to make money by having it in its power to raise the price of the article or diminish the quantity to be made and used, at its pleasure. Thus both the supply of the article and the price thereof are made to depend upon the action of a half dozen individuals, governed by a single motive or purpose, which is to accumulate money regardless of the wants or necessities of over 60,000,000 of people. Monopoly in trade or in any kind of business in this country is odious to our form of government.

Its tendency is destructive of free institutions and repugnant to the instincts of a free people, and contrary to the whole scope and spirit of the Federal Constitution, and is not allowed to exist under express provision in several of our State constitutions.

Indeed, it is doubtful if free government can long exist in a country where such enormous amounts of money are allowed to be accumulated in the vaults of corporations, to be used at discretion in controlling the property and business of the country against the interest of the public and the policy of the law for the personal gain and aggrandizement of a few individuals. It is always destructive of individual rights, and of that free competition which is the life of the business, and it revives and perpetuates one of the great evils which it was the object of the framers of our form of government to eradicate and prevent. It is alike destructive to both individual enterprise and individual prosperity, whether conferred upon corporations or individuals, and, therefore, public policy is and ought to be, as well as public sentiment, against it. All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise or any of the necessities of life are monopolies and intolerable, and ought to receive condemnation of all courts."

Chauncey M. Depew, in an address before the International Brotherhood of Engineers in Pittsburg, Pa., in October, 1890, said: "In the United States our pace is so rapid, and our development so phenomenal, that without due consideration we rush rapidly to extremes. This is true both of capital and labor. The money required to construct telegraphs, to build railroads, to establish banks was beyond the power of the individual, and so the State permitted aggregated capital, representing the contributions of many to perform these works. At the same time, through commissions, departments, and State officers, the hand of the government was constantly upon them for the protection of the public against extortion or discrimination. But within a few years everything from pine lands to peanuts, from steel rails to sardines, has been organized into some form of corporation or trust. This universal effort to absorb the individual, to divide the people into employing companies, and employees, and to destroy competition, will inevitably end in disaster. Hostile legislation and the laws of trade will leave only the legitimate enterprises surviving."

Spelling, *Trust and Monopolies*, page 226:

"Harsh legislation against trusts is fully warranted as a police regulation. The subordination of all private interest to the purposes of good government, subject only to the condition that the object to be accomplished shall be one in which the public has an interest is no longer an open question. In its general bearing the principle is too well settled and uniformly recognized (underlying the adjudications by courts of all cases involving constitutional provisions) to require more than a mere statement. But whether justified upon the ground of being a police regulation, or general legislation for securing the welfare of society, it is evident that Congress has the power to make all laws necessary to protect the great community of the Union from all forms of injustice and oppression as fully as it may provide for the abatement of nuisances and regulate the administration of justice.

The State reserves at all times, and under all circumstances, the plenary power to prohibit all things hurtful to the comfort, safety and welfare of society. It may be exercised to con-

trol the use of the property of corporations and individuals. Laws passed for the common good and necessary for the protection of the public cannot be said to impair any right, or the obligation of any contract, or to do any injury, in the proper and legal sense of the term.

Congress has power to prevent persons, whether natural or artificial, from taking for private use, without adequate compensation, indirectly through conspiracy and secret combination, and by means of extortion, that which the government cannot itself take except upon the return of its just value."

Many different plans for effecting these combinations have been tried. Resort was originally had to contracts made and entered into between the parties by which they bound themselves to sell at a certain price, or through a particular agent. Of this character were the pools entered into by competing railroad companies. But these contracts were found to be of no avail. They were openly repudiated or secretly disregarded and the courts would not enforce them. As long as the contracting parties profited by the arrangement, they lived up to their contracts, but if the contract resulted in loss, it was at once abandoned. But the modern up-to-date trust is of more ingenious construction. It is a most unique piece of legal work to further its illegal objects. It has been described as "well-fitted to baffle investigation and work out its schemes secretly, silently and effectively, a labyrinth that is a puzzle to the investor, and a peril to the public. The latest and most efficient methods of organizing a trust is for each of the parties to incorporate its own establishment. The stock of the various corporations is then turned over to certain persons called trustees. In payment for this stock the trustees issue to each party trust certificates. Thus the trustees hold the majority of the stock of each of the separate corporations. The trustees elect the directors, place their agents in charge, prevent all clashing of interest and so control the market. They have the power to cause one concern to close, limit the production of another, consolidate all the different establishments, or centralize all the production at one point. The various parties are not injured since they receive their profits from the whole trust, and not from their particular

establishment. The trust certificates themselves are watered up to a point where the vast profits of the trust will make only a reasonable dividend on all the trust certificates which have been issued. These certificates are bought and sold on the market like shares of stock. Many an innocent lamb has been fleeced in Wall street through their manipulation by the gamblers of the Stock Exchange.

The trust is now in a position to do what it pleases, raise its prices, persecute those who refuse to come into the combination, crush out competition, punish or ruin single independent producers, lower the price paid for raw material, restrict production, and render fair competition unprofitable. They control sugar, oil, coal, and many articles of daily consumption.

The following is a partial list of the trusts which have been formed in a manner little different from the modus operandi I have just described: Match trust, steel rail trust, jute bag trust, cordage trust, kerosene (Standard) oil trust, borax trust, cotton seed oil trust, linseed trust, paper envelope trust, nail trust, barb fence trust, lead trust, nickel trust, sugar trust, school book trust, gutta percha trust, copper trust, zinc trust, slate pencil trust, iron nut and washer trust, oil cloth trust, nail trust, barb fence trust, lead gas trust, dressed beef trust, distillers and cattle feeders' trust, starch trust, cigarette trust, straw braid trust, umbrella trust, stove trust, castor oil trust, paving pitch, glass and water works.

So threatening has been the attitude of these great combinations of corporate capital towards the welfare of the people, so powerful and far-reaching their influence for evil, that many of the States of the Union have embodied in their Constitution, and made part of their statutes, prohibitions against their formation, and in a number of instances have made their existence criminal.

Such laws have been passed or constitutional provisions adopted in the States of Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming.

Judge Barrett:

"The monopoly with which the law deals is not limited to the strict equivalent of royal grants or people's patents. Any combination, the tendency of which is to prevent competition in its broad and general sense, and to control, and thus at will enhance, prices, to the detriment of the public, is a legal monopoly."—Barrett, J. (*People v. V. U. R. S. R. Co.*, 22 Abbott N. C., 207.)

"Where combination is possible competition is impossible."

A society in which a few men are the employers and the great body are merely employes, or servants, is not the most desirable in a republic, and it should be as much the policy of the laws to multiply the numbers engaged in independent pursuits, or in the profits of production as to cheapen the price to the consumer. Such policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. The objections lie not to the manner in which the monopoly is created. The effect upon industrial liberty and the price of commodities will be the same whether created by patent or by an extensive combination among those engaged in similar industries controlled by one management. By the inviolable laws of human nature, competition will be excluded and prices controlled in the interest of those connected with the monopoly or trust.

The effect of trust methods—the suppression of competition in prices and sales, the over-capitalization of idle and antiquated factories in practical consolidation with those that are active and well equipped, and the discouragement by intimidation or otherwise of new and independent enterprises—is frequently to retard the natural growth and improvement of an industry, in order that rubbish may be made valuable, while the people are taxed for the support and enrichment of producers, who are incompetent, and who would be forced under the working of competition to show new proof of ability and good management or make way for better men. It is true that the results of free competition are not always satisfactory to all the producers concerned. Some will suffer loss, and, when over-production has been caused by laws that interfere with the natural course of trade, the re-adjustment may cause serious dis-

turbances. But, while there are hardships for some in the ceaseless contest, competition is far better for the people and the world, and the good of the race when absolute or qualified monopoly caused by a suppression of it.

The rule that contracts in restraint of trade shall be void as against public policy is among our most ancient common law inheritances. As early as the second year of Henry V. (1415), we find by the Year Books that this was considered to be an old and settled law.

In the famous case of the monopolies Lord Coke said that there were three inevitable results of monopoly: (1) that the price of the same commodity will be raised; (2) that the commodity is not so good as before; (3) that it tends to the impoverishment of divers artisans, artificers and others.

Monopolies cannot long exist among a free people. The people of England have never submitted to their imposition for any great length of time. They resisted them in the time of Elizabeth and again in the reign of Charles First. It was the granting of unjust monopolies, as well as the imposition of urgent taxation, which first roused the patriotic spirit of John Hampden and his countrymen, brought Charles to the block and made Oliver Cromwell Protector of England. What will the people of the State of New York, what will the people of the United States do to arrest the dangers of plutocracy. Why should not this Constitutional Convention sitting here frame those fundamental laws which are best calculated to serve and protect the best interests of the whole people of the State, place as a cardinal principle in that august document a prohibition against combinations of capital to create a monopoly in the form of trusts or otherwise.

As we have seen, other States have adopted such provisions. Why should not the State of New York? We should remember industrial society is the bed-rock of our government. Upon that rests social society, and upon that political society. The condition of affairs described, the institutions against which this amendment is aimed, have, more than any other cause, produced that general feeling of unrest and dissatisfaction we cannot fail to recognize among the working classes to-day.

Leo the XIII., in his recent encyclical on labor, says: "The elements of conflict to-day are unmistakable. The growth of industry and the surprising discoveries of science; changed relations of masters and workmen; the enormous fortunes of individuals and the poverty of the masses, and the general moral deterioration, cause great fear to every honest and thoughtful man. The momentous seriousness of the present state of things fills every mind with painful apprehension.

* * * All agree, and there can be no question whatever, that some remedy must be found for the misery and wretchedness which press so heavily at this moment on the large majority of the very poor. * * *

"The concentration of so many branches of trade in the hands of a few individuals, so that a small number of very rich men have been able to lay upon the masses of the poor a yoke little better than slavery itself."

The contest between democracy and plutocracy is the coming trial of our country. The combatants stand at death grips. One of them must go to the ground. Why not do what we can to eradicate the cause for any such conflict in our fair State?

It may be said you are fighting a windmill; no such danger can exist here as you would fain convince us. The common law would nullify it, and even that failing, have we not on our statute book a positive prohibition against such trusts as you fear in the following words: "No stock corporation shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life."

See also: L. 1893, c. 716, sec. 1: "Every contract or combination in the form of trust or otherwise, made after the passage of this act, whereby competition in the State of New York in the supply or price of any article or commodity of common use in said State for the support of life and health may be restrained or prevented, for the purpose of advancing prices, is hereby declared illegal.

"Sec. 2. Every person who shall, after the passage of this act, make any such contract or engage in any such combination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment not longer than one year, or by both such fine and imprisonment."

It is undoubtedly true the common law abhorred contracts in restraint of trade as being against public policy. But what is good for the public good, what is against public policy, has been variously viewed and many times differently decided. Upon that subject there may be, and there has been, every variety of opinion, according to the education, habits, talents and disposition of each person called upon to decide whether an act is against public policy or not. It is the province of the statesman, and not the lawyer, to discuss, and of the Legislature to determine what is best for the public good, and to provide for it by proper enactments. It is the province of the judge to expound the law only, not to speculate upon what is best, in his opinion, for the advantage of the community.

There have been many modifications made, many subtle distinctions drawn in the common-law doctrine and its application to existing conditions. But the people are unalterably opposed to monopolies, and no important modification, no subtle distinction, no covert permission to evade the principles of the old common-law doctrine would be tolerated by them, and hence we find the common law assuming the form of legislative enactment on our statute books to-day. Why should not that statute, broadened and enlarged to meet the requirements of to-day, be made part of our Constitution?

Every considerable change in the English Constitution, from Magna Charta down to our day, says Mr. Jameson in his work on Constitutional Conventions, has been achieved by conflict outside the wall of parliament—often by the blood of the English people—when victory has declared itself, the principle established by it has by parliament, been written down as part of the fundamental law.

It cannot be urged against this measure that it is properly legislative business. The Legislature has passed on it and approved the principle laid down in this amendment. It is because the matter is of such vital importance we desire to crystallize it into a constitutional provision; if it works well as a law, it cannot do otherwise as a part of the Constitution. We do not want to run the risk of having this good law repealed by a bad Legislature. We are, I must confess, somewhat suspicious of our Legislatures, and I believe the unmistakable pres-

ence of corporation influence in those bodies has done more to weaken our confidence and respect than any other cause. We have corporate influences running up and down and across this State, which are stronger than faith and accomplish far more. Consequently, matters which were once left to the Legislature are now dealt with in the Constitution. To illustrate, the following are now deemed suitable subjects to be treated in State Constitutions. The prohibition of chartering of lotteries, the prohibition or regulation of the liquor traffic, the establishment of State taxes, the founding and location of schools and asylums, regulations relating to the rights and duties of railroads and other corporations, and defining the relation of husband and wife, debtors and creditors, the establishment of the legal rate of interest, the salaries of public officials, etc.

We may, in our profession as lawyers, represent these very corporations and corporative influences against which this amendment is aimed. But here we hold no briefs for their protection. We represent the people of the State, and we should be recreant to our duty towards them, should we fail to do all that lies in our power to serve their interest and see that the commonwealth suffers no harm which it is in our power to prevent.

This amendment is not presented to affect the working classes or organized labor, it is aimed solely, as its terms indicate, at combinations of concentrated capital to control the productions, prices or transportation of merchandise. The workmen of to-day would have absolutely no relief against the combinations and trusts formed to reduce the price of his labor were it not for the magnificent organization he has perfected and against which the laws are quickly invoked by the monopolists when the workmen transgress the rule of conduct laid down for him to follow.

The general cause of justice has been aided by the influence of the trade unions.

Mr. Parkhurst—Mr. President, I move the previous question.

Mr. Cochran—Mr. President, I desired to offer an amendment.

The President—You are too late; unless Mr. Parkhurst will withdraw his call for the previous question. Will

Mr. Parkhurst give way for Mr. Cochran to offer an amendment?

Mr. Parkhurst—No, sir; I press the call for the previous question.

The President put the question on the motion of Mr. Parkhurst, and the call for the previous question was sustained.

The President—The question is on Mr. Burr's amendment to add general order No. 27, printed No. 395, relating to "trusts or combinations."

Mr. Veeder—Mr. President, can we have the ayes and noes?

The President—The ayes and noes, under the rules amended September thirteenth, cannot be demanded on calls for the previous question, or upon matters relating to procedure of business. The question is on Mr. Burr's amendment.

Mr. Veeder—Mr. President, I call for the ayes and noes, and I demand that my request be entered on the Journal.

The President—Mr. Veeder may have it entered on the Journal, that in spite of the rules he asks for the ayes and noes.

Mr. Veeder—Mr. President, I prefer to have my own expression go upon the Journal, and not the President's interpretation of it. I ask for the ayes and noes.

The President—The Chair rules that the gentleman's application is out of order, being forbidden by the rules.

Mr. Blake—Mr. President, I submit for the consideration of the Chair that this is not now a question of the order of business. This is simply a question whether certain business shall be done at all, and, therefore, it does not fall within the purview of that rule, and accordingly the Convention is entitled to the ayes and noes upon this question. I submit that for the further consideration of the Chair.

The President—The Chair thinks the point is rather too fine, and is not well taken. Mr. Burr's amendment will now be put.

Mr. Veeder—I call for a count.

The President—You are entitled to have that.

Mr. Veeder—I thank the Chair for that one privilege.

The President—Mr. McDonough and Mr. Cochran will act as tellers.

The President put the question on the amendment of Mr. Burr, and it was de-

terminated in the negative—ayes 48, noes 67.

The President—The question is now on Mr. C. B. McLaughlin's substitute.

Mr. I. S. Johnson—Mr. President, I desire to offer a substitute for that.

The President—It is too late, the previous question having been ordered.

Mr. I. S. Johnson—I supposed the previous question was only as to Mr. Burr's amendment.

The President—The previous question goes to the bottom every time.

The President put the question on the substitute of Mr. McLaughlin, and it was determined in the affirmative.

Mr. Cookinham—Mr. President, I now move that we go into committee of the whole upon the amendment, for the reason that if we pass those two amendments they must go to the revision committee and be reported back before we can vote upon them, and go to third reading, and then we may vote upon all four that may then be on the order of third reading.

Mr. Mulqueen—Mr. President, I would move, before that motion is put, that the session be extended until six o'clock.

The President put the question on the motion of Mr. Mulqueen, to extend the session until six o'clock, and it was determined in the affirmative.

The President—Now Mr. Cookinham's motion will be put.

Mr. Holcomb—Mr. President, we are on the order of third reading, and it cannot be interrupted.

The President—The Chair has repeatedly held that it has never been questioned that the matter is in the control of the Convention.

The President put the question on the motion of Mr. Cookinham to go into committee of the whole, and it was determined in the affirmative.

The Convention then resolved itself into committee of the whole on general order No. 48, and Mr. E. A. Brown took the Chair.

The Chairman—Gentlemen the house is now in committee of the whole upon general order No. 48. The secretary will read.

The secretary read general order No. 48, printed No. 425, entitled, Proposed constitutional amendment to amend section ten, article one, of the Constitution in relation to the suppression of gambling.

Mr. Storm—Mr. Chairman, in order to bring this before the committee, and also to answer some objections that were made to the wording of part of it, I move to amend by striking out the word "other" and insert in place thereof the word "similar," in line five. So that it will read: "Or any other similar kind of gambling hereafter to be allowed."

This amendment proposed is the outcome of several which have been introduced and considered by the committee on preamble and bill of rights, and is partly in response to a memorial presented by me from the citizens of the village of Flushing. The design of this amendment is to extend or define the prohibition already contained in the present Constitution, and which is against public gambling in the form of lotteries. This amendment is framed so as to explicitly prohibit the equally pernicious form of public gambling known as pool selling, which has come into existence since the present Constitution was framed, and the manifest and enormous evils of which are notorious. We are actuated by no narrow-binded hostility to horse speeding as a public pastime, but are aware that pool selling is not a necessary accompaniment. It is not the intention of this amendment to improve peoples' morals. The existing code of ethics supplemented by the force of public opinion will attend to that; but it is desired by it, to prevent the public invitation to gamble, an invitation which is specially enticing and seductive. This form of gambling was formerly carried on in the city of New York, but was so pernicious, so enormous an evil, that it was driven out. Now it has been transferred to the country, and is practiced there under the "Ives Pool Law," which law allows pool selling at specified times and places.

Now, Mr. Chairman, I contend that if gambling is wrong at certain times of the year, and in all but certain places, it is wrong all the time and everywhere. It is an absurd anomaly to have an open and a close season for a practice which the best thought declares an evil and which is legally a crime.

The agents of the pool selling interests are many and powerful, and they will leave unused no influence, open or secret, to defeat any attempt to deprive them of their opportunities. So anxious are they to get people within their inclosure that they are mostly admitted free, and every inducement to gamble spread before them. This form of gambling has ruined many young men, as we all know.

And, Mr. Chairman, in order to catch the working people, horse racing and pool selling is now carried on at night by electric light. All the worst features of modern racing are embodied in this enterprise. The horses are purely of secondary consideration; the interest centers in the betting stand, and goats would do just as well as horses to scramble around the track for a decision.

Now, Mr. Chairman, I hope this amendment will be adopted. We cannot be met by its opponents, if there be any, with the objection that this is legislation, because it is already in the fundamental law, and this is an endeavor to perfect that law up to date, and to carry out in legal form what is evidently the will of the people of the State.

Mr. Durfee—Mr. Chairman, I hope the amendment proposed by Mr. Storm to strike out the word "other" and insert "similar" will not prevail. It would, impliedly, at least, authorize in the fundamental law of the State other kinds of gambling that were not similar to book-making and pool selling, whereas the statute books already contain provisions denouncing betting and imposing penalties. It seems to me that the proposed amendment is better as it stands. On the general proposition, the evils resulting from the practices which are declared to be unlawful I suppose are well known to all the delegates here. In many localities of the State they have assumed a magnitude that certainly demands action. Even at our country fairs we have been annoyed from time to time by people who undertook to set up betting stands and sell pools, and the lads that came in from the country have been in that way led to form a taste for gambling which has resulted disastrously in many instances.

Mr. Dean—Mr. Chairman, this Convention in passing the bi-partisan proposition has put into the Constitution of the State the statute of 1894, which provides that in the city of New York, in the event of a failure on the part of election officers to come to an agreement as to a chairman, that the chairman shall be decided by lot. That is purely and simply a lottery, and now you propose to go and declare that lotteries shall be unconstitutional. I do not believe that any good was ever accomplished by putting into the Constitution or into the statutes of the State laws which the public sentiment did not support. It simply breeds contempt for law on the part of the people, and there is nothing more dangerous than public disregard for the law. This proposition undertakes to regulate the consciences and the morality of the people. Many of

us gamble in some way. We may not buy pools on the races, but we buy lottery tickets in church fairs, and we buy all kinds of chances, and, in fact, we are taking chances daily. It is an absurdity to introduce into the Constitution this provision. It is a continuation of the foolish policy of the Republican party in attempting sumptuary legislation, and it ought not to receive the respectful consideration of this body.

Mr. Augustus Frank—Mr. Chairman, the amendment now before us is reported from the committee on preamble and bill of rights. It was before that committee at various times, and received a great deal of consideration. It was first introduced in an amendment brought before us by Mr. Tekuisky, of New York. That amendment was laid aside and never reported. After considerable discussion, the matter was referred to a special committee, consisting of Mr. Green of New York, Mr. Veeder, of Kings, and Mr. Parker, of Orleans.

The special committee made its report, and the only difference there seemed to be in the committee as a whole was as to how strong they could make the report in order to cover the whole ground and prevent the species of gambling now going on in various parts of the State, particularly in the lower sections of the State. The present Constitution prohibits lotteries. Previous to 1821 lotteries were carried on to such an extent that it became necessary to make an amendment to the Constitution to prohibit them. Lotteries were previously allowed to build the old State capitol in Albany, and also to build a college at Schenectady, and for other purposes over the State. They were legalized by the Legislature. Finally it became so great an evil they had to be prohibited by the Constitution of 1821. In 1846, the Constitution again prohibited lotteries by constitutional amendment. In 1867 they were again prohibited, and by this proposed amendment they are once more to be prohibited. Now, what are the facts in regard to this matter of pool selling carried on so largely at Present? All know the State of Louisiana was almost ruined, politically and morally, by the existence of the hydra-headed monster of lotteries. The men who were at the head of the great lottery business in that State, many of them after being driven from there, moved to New York and established themselves as racing men, and set up pool selling and bookmaking, far worse and more dangerous than lotteries. They offered the State of Louisiana thirty millions of dollars to be allowed to continue the lottery business in that State. Public sentiment was aroused and their offer was

spurned, and the good people of that State finally drove them out entirely. Since then the United States government has taken the matter up, and it has been for some time past engaged in driving it out of the country. Now, many of the same men driven from Louisiana have settled themselves in the State of New York, and we are to decide whether this system of gambling in its worst aspect, shall thrive in this State. We may be told by some who may speak this afternoon on this subject that it is a matter of legislation. It is not a matter of legislation. The Legislature is powerless in the matter. A few years ago what was called the Ives pool bill was passed by the Legislature of New York. Previous to that the statute had said:

"Section 351. Bets on Horse Races.—A person who keeps any room, shed, tenement, tent, booth or building or any part thereof, or who occupies any place upon any public or private grounds within this State, with books, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers or of selling pools, or any person who records or registers bets or wagers, or sells pools upon the results of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or who, being the owner, lessee or occupant of any room or shed, tenement, tent, booth or building, or part thereof, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depository for hire or reward, of any money, property or thing, of value staked, wagered or pledged upon any such result is punishable by imprisonment for 'one' year or by fine not exceeding two thousand dollars, or both."

Then again the statutes of New York says:

"Section 352. Racing of animals for stake.—All racing or trials of speed between horse or other animals for any bet, stake or reward, except such as is allowed by special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in such bet, or stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits to the people of this State all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof."

Now, it is said—and I read this from a pamphlet prepared

by the people of the village of Flushing, where this evil has been going on to the demoralization of the village and the people:

"How could gambling flourish with such a law in force? It could not. Hence the iniquitous 'Ives pool law.' This law was passed by the Legislature of the State of New York, May 26, 1887, and it became a law without the approval of the Governor, because he did not return it to the Legislature within ten days after it was presented to him. Under section 9 of article 4 of the Constitution of New York, as he neither signed it nor vetoed it within the ten days, he allowed it to become a law without his signature.

I may remark that all over the State petitions poured in upon the Governor asking him to veto that law. In my own village a public meeting was held in the largest church, and resolutions were adopted asking the Governor not to sign the "Ives pool bill." He did not sign it, but allowed it to become a law without his signature.

Now, what is this Ives pool law? The law is chapter 479 of the laws of that year, and it is innocently entitled: "An act prescribing the period in each year during which, and the terms under which, racing may take place upon the grounds of associations incorporated for the purpose of improving the breed of horses, and suspending the operation of certain sections of the Penal Code."

Section 1 imposes a tax of five per cent upon the gross receipts for admission on race days, payable annually to the Comptroller of the State of New York.

Section 2 requires officers of the association to report in writing to the Comptroller a statement, under oath of the treasurer, of the amount of such receipts for admission.

Section 3 provides penalties for neglect or refusal to make such report or pay the tax.

Section 4, which it is quite apparent on examination, contains the real purpose of this extraordinary legislation, and is as follows:

"Section 4. The number of days upon which racing may be conducted upon any race track or grounds is limited to thirty days in each year, and during that number of days only races shall be authorized and allowed upon such tracks or grounds, during which time the same may be kept open for the admission of the public, subject to the conditions and limitations prescribed by the acts or the several amendments thereto, under which the said associations were incorporated. And

the provisions of sections three hundred and fifty-one and three hundred and fifty-two of the Penal Code shall not apply to the grounds of such associations during the number of days in each year during which the said races are hereby authorized; that such racing and all pool selling in this State shall be confined to the period between the fifteenth day of May and the fifteenth day of October in each year. And all pool selling shall be confined to the tracks where the races take place, and on the days when the races take place."

Section five, merely provides as to a receipt for the payment of the tax.

Section six as amended in 1893 by chapter 455, shrewdly attempts to buy, as widely as possible, friends for this crime permitting law, by providing that the fund thus gathered from the race tracks shall be annually distributed for prizes for improving the breed of cattle, sheep and horses, and for prizes in any other regular classes at the various county fairs held throughout the State, by the State Agricultural society.

In conversation recently with one of the most prominent members of the Convention, he remarked he was decidedly for this proposed amendment now under consideration. He had been obliged to remove from his office one of the brightest men even in it because he was addicted to this form of gambling, book making and pool selling, and had stolen his money for the purpose of continuing it. I might read you at length numerous extracts from the daily papers telling of men who have been ruined by the gambling carried on upon the race tracks of this State, but it is unnecessary.

I do not see how any delegate in this Convention can vote against this amendment, which simply provides that this infamous business shall not be carried on longer in this State, demoralizing and ruining thousands of young men, and older men, and even women. Every parent, every employer, every well wisher of our people, and every good citizen of the State of New York, will be pleased to have the proposed amendment become a part of the Constitution.

We can do no better work than to place it before the people for their adoption. Now is the time to act and not allow the wicked business to gather strength from year to year, until its deadly influence spreads over every part of our fair commonwealth. Again, allow me to hope and trust that not a vote in this Convention will be cast against the amendment.

Mr. Nicoll—Mr. Chairman, I have had more or less experience as a public officer with the operations of the Ives Pool law. Shortly after that law was passed the pool selling of course commenced upon the race tracks under it. But that did not seem to give large enough scope to the operations of the gambler and they undertook to institute pool selling in the city of New York, upon the theory that it having been legalized on the race tracks, it could not be said to be illegal in the city of New York. That is, they could receive commissions and place them by telegraph at the race tracks. The business was conducted in that way as a cover for genuine pool selling. When I was District Attorney for New York we undertook to wipe the New York pool sellers out, and I had the honor of drawing the present law which is to be found in the Penal Code, which prevented that pool selling in New York, so that since that time we have had practically no pool selling in this State except upon the various race tracks, because the law is now so stringent and the penalty so severe that it is too dangerous for any man to undertake its violation in the cities of this State. That is the way the matter stands to-day.

Now, the question is, ought we not now in this Constitutional Convention put the seal of our condemnation upon all kinds of gambling, and I say we had. (Applause.) We ought not for one moment to accept the suggestion of my friend, Mr. Storm—

Mr. Storm—It is not sincere.

Mr. Nicoll—We ought not for one moment think of accepting that suggestion and say all similar kinds of gambling—

Mr. Storm—I withdraw that.

Mr. Nicoll—What we want to-day is to condemn all kinds of gambling, book-making and everything else. Now, of course the Ives Pool bill passed and under it race tracks grew. The Coney Island Jockey Club, Morris Park, in which millions and millions of dollars are invested, and various other race tracks, and it is true, undoubtedly true, that in those great establishments millions and millions, perhaps twenty millions of dollars are invested to-day, and of course it is true that there are a hundred thousand men to-day who are engaged in owning, managing or caring for horses, and it is undoubtedly true that the effect of this amendment, if it goes into our Constitution, will be to wipe out those twenty millions of dollars and take away their occupations from one hundred thousand men. But why should we consider that? Why should we consider that? Of course men who go

into a business which is quasi legal take these risks. I do not think it amounts to a question of breaking faith or repudiation. Men get the benefit of an act which offends the public morals. It is one of the risks of the trade and they are taking their chances. And while I do not quite agree with the statement of Mr. Frank, that there is no conceivable reason for any one voting against this bill, upon the faith of the act of the Legislature of the State at least twenty millions of dollars has been invested and one hundred thousand men have found employment. It might indeed make us pause, and it has made me hesitate, but upon going over the thing in my own mind, I have thought that while it is true that this act was passed, it was an act dangerous to public morals, and, therefore, I am determined to put myself on record and vote against all kinds of gambling; not against pool selling or book making, but against it all. (Applause.)

Mr. Veeder—Mr. Chairman, may I ask the attention of the committee for a moment. In my judgment the amendment offered by the gentleman from Queens should not prevail. As has already been said, it would look as though we were willing to encourage other species of gambling. Now, while everyone admits that book making and pool selling are prevailing crimes to-day and very injurious to young men of the State as well as the old men, we should not limit it, and while we are about it we should prohibit in the Constitution all forms of gambling, and I, therefore, hope the amendment of Mr. Storm, will not prevail.

Mr. Storm—I withdraw the amendment, Mr. Chairman.

The Chairman—The gentleman withdraws the amendment.

Mr. Marshall—Mr. Chairman, I desire to offer an amendment merely for the purpose of making the form of the amendment a little better.

The Chairman—The question is on the amendment of Mr. Marshall. The secretary will read the amendment.

The secretary read the amendment as follows:

After the word "tickets" in line four insert the word "or." Insert lines four and seven inclusive after the word "lottery" where it first occurs in section ten of article one of the Constitution and strike out the remainder of the section.

The Chairman put the question on Mr. Marshall's amendment and it was determined in the affirmative.

Mr. Storm—Mr. Chairman, I move that the committee now arise report this amendment favorably and recommend its passage.

The Chairman put the question on the motion of Mr. Storm and it was determined in the affirmative.

The President resumed the Chair.

Chairman E. A. Brown—Mr. President, the committee of the whole have under consideration printed No. 425, entitled, "Proposed constitutional amendment to amend section ten, article one of the Constitution in relation to the suppression of gambling," have gone through with the same, made some amendment thereto, and have instructed the chairman to report the same to the Convention and recommend its passage.

The President—The question is on agreeing on the report of the committee.

The report of the committee was agreed to.

The President—It will go on the order of third reading by way of the committee on revision.

Mr. Hedges—Mr. President, I move that we go into committee of the whole on general order No. 73.

The President put the question on the motion of Mr. Hedges, and it was determined in the affirmative.

The Convention resolved itself into committee of the whole.

Mr. Hotchkiss in the chair.

The Chairman—The Convention is now in committee of the whole on general order No. 73, printed No. 453, and the secretary will read.

The secretary read the proposed constitutional amendment as follows:

"Article eleven of the Constitution is hereby amended by striking out all of this article and inserting in lieu thereof the following:

"Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State.

"Sec. 2. The Legislature may provide for the enlistment into the active force of all such other persons as may make application to be so enlisted.

"Sec. 3. The militia shall be organized and divided into such land and naval, and active and reserve forces,

as the Legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriations for the maintenance thereof.

"Sec. 4. The governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, any of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate and, with the consent of the Senate, appoint all major-generals.

"Sec. 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment except two-thirds of the members present in each house shall concur therein.

"Sec. 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. And no commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more."

Mr. Hedges—Mr. Chairman, I shall occupy the attention of the committee but for a few minutes. I ask, in the first place, as printed in the bill on line 10, of page 2, of section 4, there is a clerical error. The word "an" should read "all."

The Chairman—Is there any objection to correcting the typographical error referred to by Mr. Hedges? If not, it is so ordered.

Mr. Hedges—Mr. Chairman, I shall preface my remarks by stating that your committee has had correspondence with all the leading officers of the National Guard during the sitting of the committee, and had submitted

this amendment in advance to them. It has received the approval of every National Guard officer. The National Guard to-day is unanimous in support of this article. The main change that we have made in this is, as you will observe, first, we recognize the naval branch which has not really any constitutional standing. We make it constitutional in this article. We also insert here that there shall at no time be less than ten thousand men uniformed, armed and equipped. We also provide in this article that it shall be the duty of the Legislature at each session to make sufficient appropriation for the maintenance thereof. We do that with the idea that there might some time arise a condition where no appropriation might be voted. We thus make it incumbent upon our legislators to provide for the National Guard. It is useless for me here to say, as every member of this Convention knows of the importance and of the high esteem in which the National Guard of the State of New York now stands. There are in the militia now upwards of eleven thousand men. We make a minimum here. We do not fix the maximum.

There is one other change that we make here in section 1. "All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia." In the old Constitution it was required that they be armed and equipped. That is obsolete and is stricken out entirely.

Mr. McDonough—Mr. Chairman, I would like to ask the gentleman a question. I find in the present Constitution that certain inhabitants of this State, with religious scruples of conscience adverse to bearing arms, are exempt from military service.

Mr. Hedges—In lieu of that we have here inserted in section 1, "subject however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State."

Mr. McDonough—But the Legislature may not necessarily exempt this class of people?

Mr. Hedges—They are exempt now.

Mr. McDonough—But they will not be if your amendment passes.

Mr. Hedges—It says, such as are now exempt. Mr. Chairman, those are

the material changes that have been made.

Mr. Cochran—Mr. Chairman, if the opportunity is afforded me, I would believe this was a most excellent time and place to have the people of this State understand really what the militia of the State is; to understand the relationship which the State bears to the militia and what the militia bears to the State; to understand the important duty which the militia of this State is now performing for the State; and that although the State is annually making large expenditures for the support of its militia, it is maintaining that militia for its own good, and the individual members of the militia are making many sacrifices of time and of financial interests in order to serve the State faithfully and well. But I believe, sir, that the time is too short for us to go into any such treatment of this subject, and I will endeavor, in a few words, to explain where the changes have been made from the present Constitution, what parts of the present Constitution have been obliterated, what changes have been made, and why we have made those changes. I believe, sir, as I have had occasion to say before, that we should not make any changes in the present Constitution unless some necessity exists therefor. I am confident that a necessity exists for changing the present Constitution so far as it relates to the militia. The present article relative to the militia is known as article 11, and if you will examine that article you will find that it is far from a complete one. It fails at the very outset to put into the fundamental law of the State, what is the militia? There is nothing in the present article which says who does or who does not belong to the militia, and we are left to search in some other places for some answer to that question. That was the first thing to which this amendment was directed—to put into the Constitution who constituted the militia. That we have embodied in section 1.

Now, as far as that provision is concerned, I would say that we are bound by the Federal Constitution and the statutes of the United States, and that is not a mere arbitrary selection by the committee, but we are governed entirely by the limits of the Federal Constitution, which provides that all able-bodied male citizens, residents of the respective States between the ages of eighteen and forty-five, shall consti-

tute the militia of the respective States. That we have embodied in section 1.

Now, we have also added in section 1 a clause as to exemption. The only exemptions provided for in the present Constitution is in section 1, which provides that the inhabitants of any religious denomination whatever as, from scruples of conscience, are averse to bearing arms, shall be excused therefrom, as provided by law. We have limited that, allowing the Legislature and the Federal Congress to make such limitations as from time to time they may see fit. There is now embodied in the Military Code all the exemptions, and they meet fully with all our requirements.

I might say here that the term militia is very generally misunderstood, and that may account for the misunderstanding of some of the committee of section 2 of this amendment. The ordinary term militia applies to all citizens of the State between the ages of eighteen and forty-five years, but those of the militia who are doing active duty, volunteer for active duty and become part of what is known as the National Guard of Uniformed Militia. In other words, there is a distinction between the uniformed and un-uniformed militia. Now, every man, as I said before, between the ages of eighteen and forty-five, must belong to the militia whenever the State desires to enroll him; but if they desire to volunteer, the State uniforms them, and they become members of uniformed National Guard. We have in this State a number of good duty-doing militiamen, or rather National Guardsmen, who would be excluded by the provisions of section 1 of this amendment, for the reason that they are not citizens. They come here of foreign birth. They have not, as yet, become citizens of the State. We often have residents of the State of New Jersey members of our uniformed National Guard, and it is to cover such cases as that that the committee have seen fit to put in section 2, that the Legislature may provide for the enlistment into the active force of all such other persons as may make application to be so enlisted. We could not compel any residents of the State of New Jersey, or any foreign-born resident, to become a member of our militia, but we do want them in the service, if they see fit to volunteer, and it is to cover those cases that we have put in section 2 in this amendment.

Section 3 of this proposed amendment is really the most important of the entire amendment. There has existed a question as to the right of the State to maintain a naval militia. It has, however, not received much consideration, because it was thought that there was nothing in the controversy. At the same time, when we were preparing this article, we thought it well to avoid all question in the future, to recognize the naval militia, and to that end we have provided that the Legislature may divide the State into reserve forces, land and naval. The reserve forces constitute all who are not active; that is, the ununiformed militia. We provide that the State shall maintain, at all times, a force of not less than 10,000 men.

The present Constitution provides that the militia of this State shall be armed and disciplined and ready to serve us, but there is nothing in that provision which will prevent any governor, on occasions such as we have seen in some of our western States, or any Legislature which so desires, from wiping the National Guard out of existence. We have, therefore, inserted in this provision that there shall be maintained, at all times, a minimum force of 10,000 men.

As to the number selected, I might say, that that number has existed in the law of the State for many years, even as far back as 1820. There has always been a minimum of 10,000 men. The present law provides that there shall be a minimum of 10,000 men and a maximum of 15,000 men. The present force aggregates some 11,000 men.

The last clause of this section 3 makes it the duty of the Legislature at each session to make sufficient appropriations for the maintenance of the National Guard. That is an entirely new provision. There is nothing in our Constitution which makes it the duty of any of the branches of the State government to either maintain or look to the maintenance of the National Guard, and for that reason we have inserted this provision.

Section 4 of this amendment is the same as the present section 3, with but one exception. We have omitted from the present Constitution the provision relative to the commissary general, that he should be appointed for two years, and should give

a bond. That provision we have omitted, because it is an obsolete provision. It has been in the Constitution since 1821 and has now no weight. The commissary general should have the same tenure of office as all the other staff officers of the Governor, and that is, should go out of office with the chief. At the time this provision was put in the Constitution the commissary general was the only officer who had charge of all the State property, and it was thought best to give him a definite term. As it is now, the commissary general has no property to take care of and has no responsibility, and we have wiped it out as obsolete.

Section five is also a new provision. The present Constitution has two inconsistent sections relative to the election or appointment of officers. Section two of the present Constitution provides how the officers shall be elected or appointed, and then section six, which was added subsequently, provides that in case the method provided for in section two shall not be deemed conducive to the improvement of the National Guard, then the Legislature, by a two-thirds vote, may provide the method that may be most conducive to that improvement. Under section six the Legislature has, for the last fifty years, made very many changes from what is provided in section two. In fact it is entirely obsolete, and section six is the section we are now working under. To obviate this, and at the same time recognize some system by which the officers could be elected, we have provided in section five that commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein. This allows the same restriction that now exists in the Legislature for changing the existing mode of election or appointment, and codifies in one section what is now in two sections.

Section six, of this amendment, is in effect the same as the present section five, with the exception of a provision at the end relative to the removal of an officer from his office. Under the present Constitution an officer can be

removed by the Senate only on the recommendation of the Governor, or by the sentence of a court-martial. Now, we have found in our experience that that was not sufficient; that there were very many instances where it was desirable to remove an officer from his position, and yet it was not within either one of the provisions provided for in the Constitution. By some hocus pocus way the Legislature provided another way, but to my mind they have always been unconstitutional. We have put in all the provisions which are in existence in the Military Code relative to the removal of officers. That is to say, we provide that an officer may be removed upon the finding of a board, or if he absents himself without leave for a period of six months or more. The provision for the examining board is a most excellent one, and as was said by General Hedges, meets with the full approval of the officers of the National Guard. The absence without leave for a period of six months or more is to cover the very infrequent cases of desertion. The present military law provides that when an officer is absent for six months or more he can be discharged from the service. We have now embodied this in the article proposed.

Those, I think, are, in brief, all the changes which have been made. I do not desire to take up any more of the time of the committee, but at the same time if there are any questions to be asked I will be most delighted to answer them.

Mr. Peck—Mr. President, I desire to ask a question. I would like to ask the gentleman who has been explaining the bill whether it is not unusual to remove officers on the mere sentence of a court-martial or upon the finding of an examining board; whether it is not usual to require such sentences to be confirmed by some superior authority, or the results of the examining board to be confirmed in some way; whether the mere sentence or mere finding of an examining board is sufficient to remove from a military office?

Mr. Cochran—I would say, in answer to the question of the gentleman from Rensselaer, that that provision is taken from the present Constitution, and that it is construed not to be a sentence until it is approved by the commander-in-chief. He can disapprove of it at any time and the sentence is null and

void. As to the examining board I would say, as I have already stated, that it is a very rare instance. At the same time we have had occasions when it was a most needed provision. I can cite what occurred during the past two years, which will illustrate better than any thing I can say. We have had a change in our entire drill system during the past two years. We have had very many officers who have been in the guard so long that they would not depart from the old methods and would not study the changes and put them into effect. If we do not have a provision such as this is for removing them by an examining board, we would never have any way of getting rid of them.

Mr. Peck—Is it held in those cases that the finding is not a finding until it is approved?

Mr. Cochran—That is the universal practice.

Mr. McDonough—Mr. Chairman, I offer the following amendment.

The Chairman—The secretary will read the amendment.

The secretary read the amendment as follows:

Insert after the word "states" in line 8, page 1, the words "but all such inhabitants of this State of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms may be excused therefrom upon such conditions as prescribed by law."

Mr. McDonough—Mr. Chairman, I desire to state that these are the very words of the present Constitution. I do not find them in this amendment. The words provide for the very exemptions as now provided by law. This provision just read does not provide for exemptions solely. It provides for exemptions upon such conditions as the Legislature may prescribe. I think if this amendment as reported by the committee, shall stand and be adopted by the Convention, it will change the rule laid down in the present Constitution, and I think we had better have the words of the present Constitution remain.

Mr. Cochran—Mr. Chairman, in reply to what Mr. McDonough has said, I desire to state that that very question was considered very carefully by the committee. In fact, Mr. Tucker introduced an amendment looking to the striking out of that very provision and that amendment was reported back

favorably in connection with this very article. We struck it out from this article. There is nothing in it that would prevent a man from saying, I am a Presbyterian, and thus be exempted.

Mr. McDonough—Mr. Chairman, I rather supposed something of that kind. I rather supposed that they were trying to change the present law, although it was told me by the gentleman who first explained it that that was not the fact. Now, if this is to be changed, I want it changed with full knowledge of the fact. I want this Convention to change it. We are not so anxious for recruits now as to divert from the rule established by the present Constitution.

Mr. Cochran—Do you know of any religion which would be covered by this amendment?

Mr. McDonough—I understand the Quakers are opposed to it. I am not. I am a fighter from way back.

Mr. Ackerly—Mr. Chairman, it will be noticed that this amendment says "subject, however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State."

Now, the Revised Statutes contain a provision providing that all such inhabitants of this State of any religious denominations whatever as, from scruples of conscience, may be averse to bearing arms, are to be excused therefrom by paying to the State an equivalent in money, and the Legislature is to provide by law for the collection of such money, to be estimated by the value of the services of an able-bodied militia man. That has been the law for a great many years, and there is no reason why it should not remain the law of this State. This amendment simply ratifies that and leaves the Legislature to change it if it sees fit.

The Chairman—Only four minutes remain for the debate.

Mr. Putnam—Mr. Chairman, all I have to say is, in reference to the statute that has just been read by Mr. Ackerly. The Legislature last year passed a law reorganizing the National Guard of the State of New York, and, as an officer of the National Guard of this State, I know that the feeling is very strong in favor of the passage of this proposed amendment as presented by the committee. The

National Guard officers of the State have practically agreed among themselves, as to this form of amendment being advisable and in every way fitting and proper to be passed by this Constitutional Convention. It meets with the approval of the executive officers of this State.

So far as the provision suggested by my friend from Albany (Mr. McDonough), is concerned, the statutes of the State of New York to-day provides for just what he asks shall be provided for, and the provision in section one of the proposed amendment does the same thing. I cannot, therefore, see any good reason for passing the amendment as proposed by Mr. McDonough, and I hope that the article will pass as proposed by the committee.

Mr. McDonough—Mr. Chairman, may I ask the gentleman a question.

Mr. Putnam—Certainly.

Mr. McDonough—Then what was the object of striking it out of the Constitution?

Mr. Putnam—It is unnecessary.

Mr. Goeller—Mr. Chairman, as a member of the military committee of this Convention, I desire to press a consideration or two. I was going to say that the adoption of this article as submitted by the committee is something that is founded in the highest consideration of the public welfare, and also in the highest consideration of protection to life and property. The committee have had it for months under consideration as well as various other amendments, and have deduced and taken out the best of the various bills that were formulated and placed before them. They have, as has been stated here, consulted with the best authorities upon military affairs and gentlemen identified with that calling in this State. The article presented, viewed from the present standpoint, is undoubtedly an invaluable measure and will meet all the present military requirements of the State.

In reference to the amendment offered by Mr. McDonough, of Albany, that amendment may be good or it may not be good. However, that may be, there is considerable left for the consideration of the next Legislature or any succeeding Legislature. For instance, we say in section 1 of the bill: "subject, however, to such exemptions as are now, or may be hereafter cre-

ated by the laws of the United States, or by the Legislature of this State."

Now, Mr. Chairman, in view of the fact that our time is very limited, I desire to impress further upon the Convention that asking for legislation in reference to the militia is not asking anything new. It is not novel. There has been a provision in the Constitution of 1846, and the provision that we here propose is an improvement, and a very limited one at that. I admit that, in view of exigencies that have arisen in the past few years on account of disorders in the State, etc., that it is very proper that an amendment of this kind should be passed in the highest consideration of public duty.

Mr. A. H. Green—Mr. Chairman, I would like to ask one question. I would like to know what propriety there is in fastening upon the State of New York a naval force, which should properly belong to the United States to pay? If any military gentleman can answer that question satisfactorily I should like to know it.

Also, I should like to ask what the cost of maintaining 10,000 soldiers will be?

I should like to have those two questions answered.

Mr. Cochran—In reply to the questions of Mr. Green, I will say that so far as the first is concerned, the right of the State to maintain a naval reserve has been recognized since the foundation of the State. The Constitution says that the Governor is the commander-in-chief of the army and navy. I do not want to go any further back than that.

The Chairman—The time of debate is now closed, and the first question is on the amendment offered by Mr. McDonough, which the secretary will read.

The secretary read Mr. McDonough's amendment, as follows:

Amend by inserting after the word "States," in line 8, page 1, the words: "But all such inhabitants of this State of any religious denomination whatever as, from scruples of conscience, may be averse to bearing arms, shall

be excused therefrom, upon such conditions as may be prescribed by law."

The Chairman put the question on Mr. McDonough's amendment, and it was determined in the negative.

Mr. Hedges—Mr. Chairman, I move that the committee do now rise, report this amendment to the Convention, and recommend its passage.

The Chairman put the question on the motion of Mr. Hedges, and it was determined in the affirmative.

President Choate resumed the chair.

Chairman Hotchkiss—Mr. President, the committee of the whole have had under consideration proposed constitutional amendment printed No. 453, entitled "Proposed constitutional amendment to amend article 11 of the Constitution, relating to militia," have gone through with the same, made an amendment thereto, and instructed the Chairman to report the same to the Convention and recommend its passage.

The President put the question on agreeing with the report of the committee of the whole, and it was determined in the affirmative.

The President—The amendment goes on the order of third reading by way of the committee on revision.

Mr. Foote, from the committee on revision, to which was referred the proposed constitutional amendment introduced by the committee on preamble and bill of rights, introductory No. 384, reported by the committee on preamble and bill of rights and by the committee of the whole, entitled "Proposed constitutional amendment to amend section 10 of article 1 of the Constitution, in relation to the suppression of gambling," reports the same as examined and corrected and as correctly engrossed.

The President—It stands on the order of third reading.

Mr. Marshall—Mr. President, I move that we take a recess until eight o'clock this evening.

The President put the question on the motion of Mr. Marshall, and it was determined in the affirmative.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 136.

EVENING SESSION.

Friday Evening, Sept. 21, 1894.

The Constitutional Convention met in the Capitol, Albany, N. Y., September 21, at 8 p. m.

Second Vice-President Steele called the Convention to order.

The secretary called the roll and announced that a quorum was present.

Mr. Foote—Mr. President, I desire to present a report; and I wish to call attention to the fact that this proposed amendment has been printed and is reported in printed form; that no changes were made in committee of the whole, except to change the word "an" to "all" to correct a printer's error; and that, therefore, the rule which requires this proposed amendment to have been once printed before being put upon third reading has been complied with.

The secretary read the report as follows:

Mr. Foote, from the committee on revision and engrossment, to which was referred the constitutional amendment introduced by Mr. Cochran, introductory number 333, reported by the committee on militia and by the committee of the whole, entitled proposed constitutional amendment to amend article 11 of the Constitution relating to the militia, reports the same as examined and corrected, and as correctly engrossed.

Mr. Woodward—Mr. President, the report of the committee on preamble and bill of rights has never been adopted. It has never been brought before the committee of the whole, even. It was made by the chairman,

and we have no preamble as yet adopted by the Convention. It seems to me that it is rather important that we should have a preamble to the Constitution. We labored a long time on the preamble. There were not many amendments made, but there were some, and it seems to me it ought to be brought forward. Besides, Mr. President, I have a minority report that I was told I could bring in when the main report was to be acted upon. I have been ready to bring forward my minority report from day to day, but I have waited for the chairman of the committee on preamble and bill of rights to bring forward his report, so that I might bring forward my minority report. I would like to have it brought forward to-night, if it is not too late. It seems to me that we should not neglect the preamble; we shall have no handle to our Constitution if we do, and there should be a handle to it. (Laughter.) It seems to me it would hardly do to send it forth without a handle.

The President pro tem—Does Mr. Woodward ask that it be ordered to a third reading?

Mr. Woodward—I ask that it be ordered to a third reading. It has not been brought before the committee of the whole yet. It seems to me it is necessary that that should first be done.

Mr. C. B. McLaughlin—Mr. President, I ask that the minority report be read.

Mr. Woodward—Mr. President, I will read the minority report.

Mr. Woodward read the report as follows:

We, the People of the State of New York, hold these truths to be self-evident: That all governments are founded upon one or the other of two principles. Upon equal rights or upon exclusive privileges. That our government, both State and national, is founded upon the principle of equal rights.

That grateful to Almighty God for our freedom, in order to secure those rights and the blessings of liberty, we do establish this Constitution:

Sec. 2. The State of New York is an inseparable part of the American Union, and the Constitution of the United States, within its legitimate sphere, is the supreme law of the land.

No person has a right, in this State, to incite others to the commission of crime or violence, or to advocate in public doctrines, tending directly or indirectly to overthrow or abrogate the rights of the people to enjoy property, life, liberty or the pursuit of happiness.

Sec. 8. Every citizen of this State shall be free to obtain employment whenever possible, and any person, corporation or agent thereof, unlawfully or maliciously interfering or hindering in any way, any citizen or person from obtaining or enjoying employment already obtained, shall be deemed guilty of a crime, or misdemeanor, depending on the means used.

Sec. 9. The rights of the laborer shall receive just protection, through laws calculated to protect him in his labors, and to promote the industrial welfare of the State.

Sec. 7. The people of this State have a right to assemble together to consult for their common good, or to instruct their representative, and to apply to the Legislature for the redress of grievances.

But secret societies, associations or combinations illegally interfering with the business or occupation of private individuals or corporations, by force of numbers and violence, should be suppressed.

The rights enumerated in this bill of rights shall not be construed to limit other rights of the people not therein expressed. This declaration of rights and privileges of the inhabitants of this State is hereby declared to be a part of the Constitution of the State, and shall not be violated under any pretense whatever.

Mr. Choate—Mr. President, I move that rule 36, so far as it prohibits a third reading, or requires a third read-

ing to be on a day subsequent to that on which the proposed constitutional amendment passed in committee of the whole, be suspended. The object of this motion is to enable us, if time allows to-night, to pass on third reading upon all the four matters that remain, including the two that passed the committee of the whole to-day.

The President pro tem—Are there any objections to this order being made? There being none, it is so ordered.

Mr. Barhite—Mr. President, I move you, sir, that the committee of the whole be discharged from consideration of the minority report of the committee on preamble, and that it be ordered to a third reading.

Mr. C. B. McLaughlin—I object to that, Mr. President.

The President pro tem—It requires unanimous consent.

Mr. E. R. Brown—Mr. President, I offer the following resolution:

The secretary read the resolution, as follows:

"Whereas, no provisions were made by the Legislature for the care of the document room, and said document room having been placed in charge of Joseph Fayel by the sergeant-at-arms, therefore

"Resolved, That for the very efficient services which Joseph Fayel has rendered this Convention in the discharge of his duties he be paid the sum of six dollars per day for the session, the same that is paid by the Legislature for the same services rendered.

The President pro tem—It is referred to the committee on contingent expenses.

Mr. Cookinham—Mr. President, I call for the regular order of business, the third reading of amendments.

The President—The first in order is general order No. 12, and the secretary will read the title.

The secretary read the amendment by title, as follows:

"Proposed constitutional amendment to amend article 13 of the Constitution, relating to future amendments."

The President pro tem—One hour is allowed by the rules for debate.

Mr. Hawley—Mr. President, no one arising to debate the amendment, I ask that the proposed amendment be read for the third time.

The President pro tem—The secretary will read the proposed constitutional amendment through.

The secretary read the proposed amendment, as follows:

"Article 13 of the Constitution is hereby amended so as to read as follows:

ARTICLE XIII.

"Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their Journals, with the ayes and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval, in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

"Sec. 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a Convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of such electors shall decide in favor of a Convention for such purpose, the electors of every Senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the Capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such Convention shall have been completed. Every delegate shall receive for his services the same compensation, and the same mileage, as shall then be annually payable to the members of the Assembly. A major-

ity of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided unless by the assent of a majority of all the delegates elected to the Convention, the yeas and nays being entered on the Journal to be kept. The Convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and to fix their compensations and to provide for the printing of its documents, journal and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed Constitution or constitutional amendment which shall have been adopted by such Convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendments shall go into effect on the first day of January next after such approval.

"Sec. 3. Any amendment proposed by a Constitutional Convention relating to the same subject as an amendment proposed by the Legislature, coincidentally submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the Legislature."

The President pro tem—This proposed constitutional amendment having had three several readings, the question is now upon its final passage. Those in favor will say aye, and those opposed will say no.

The secretary proceeded with the call of the roll.

Mr. Choate—Mr. President, I would like to explain my vote, the reason why I vote against this amendment. As I read it, it virtually prevents the holding of any future Conventions. It is provided in the second section, that on the question being submitted to the electors of the State, shall there be a Convention to revise the Constitution and to amend the same—

Mr. Veeder—Mr. President, I rise to a point of order. I understood we were prohibited from explaining our votes.

Mr. Choate—I do not know of any action that has prohibited it.

Mr. Veeder—I ask unanimous consent that the gentleman have the privilege.

Mr. Choate—I am very much obliged to Mr. Veeder.

It is provided that the question whether there shall be a Convention shall be decided by the electors of the State, and in case a majority of such electors shall decide in favor of a Convention for such purpose, then there shall be a Convention. If, then, there are two million voters in the State, it will require the affirmative vote of a million and one, which in all probability never could be secured for the holding of a Convention. That this is the necessary meaning is clear by a comparison with line 8 on page 2, where in respect to an amendment proposed by two successive Legislatures, it is provided expressly that the people may approve and ratify such amendment or amendments by a majority of the electors voting thereon.

Now, the contrast is clear, precise and unmistakable, and I do not see that any court could possibly hold that a case of a majority of such electors, immediately referring to the electors of the State, meant anything less than a majority of all of the electors of the State; emphasized by the contrast with the provision for a ratification of the action of two Legislatures, which is expressly limited to a majority of the electors voting thereon.

Now, if that cannot be remedied, I vote no.

The roll call being completed, the following result appeared:

Ayes—Messrs. Abbott, Acker, Ackery, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A.; Cady, Carter, Church, Clark, H. A.; Cookinham, Crosby, Davenport, Davies, J. C.; Deterling, Deyo, Dickey, Doty, Dur-

fee, Emmet, Faber, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Galinger, Gibney, Giegerich, Goodelle, Green, A. H.; Green, J. I.; Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Johnson, I. Sam; Johnson, J.; Kellogg, Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H.; Lincoln, Lyon, Manley, Marshall, Maybee, McKinsty, McLaughlin, C. B.; McMillan, Mereness, Moore, Nichols, W. H.; Nicoll, De L.; Nostrand, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek Pool, Porter, Powell, Putnam, Roche, Rogers, Sandford, Spencer, Springweiller, Steele, A. B.; Steele, W. H.; Storm, Sullivan, W.; Tekulsky, Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward—94.

Noes—Messrs. Bowers, Cochran, Danforth, Dean, Forbes, Mantanye, Peabody, Titus, Veeder, President—10.

Mr. Holls—Mr. President, I suggest that this is so clearly a typographical error that unanimous consent should be given that it be rectified.

Mr. Veeder—I object, Mr. President.

Mr. Vedder—Mr. President, I move that the vote by which this bill was passed be reconsidered. If what the President says is true, it ought not to pass, and, therefore, I move a reconsideration. That matter, Mr. President, was under consideration in committee of the whole, and at least a score of delegates here have understood that it was changed.

Mr. Marshall—It was changed.

Mr. Vedder—If it is still in there, I move a reconsideration so that we may correct it and pass the bill to-night. I move a reconsideration.

Mr. Veeder—Mr. President, upon that I call for the ayes and noes.

Mr. Bowers—A point of order, Mr. President. Has not the Chair announced that the amendment was adopted?

The President pro tem—The amendment was passed, but it can be reconsidered.

Mr. Tekulsky—Mr. President, I understand that this is only an error of the printer, and in the committee of the whole that was changed.

Mr. Vedder—We passed it as read.

The President pro tem—Mr. Vedder is evidently right. We have passed the proposition as read, and it cannot be altered or rectified without a reconsideration.

Mr. Vedder—I move that reconsideration, Mr. President.

Mr. I. S. Johnson—Mr. President, I hope this matter will be reconsidered; and I hope while we are reconsidering it that we will consider another question. This matter was brought up and railroaded through. An attempt was made to bring about something by which we might consider these matters, but no proposition was allowed to be considered. The previous question was moved at once so that we could not consider. We see what it means to attempt to rush things through at the rate which this body sees fit to do. We have abandoned every rule. We have to-night seen fit to say that we would go back upon the very resolution or the very action which we have passed; to say that we would consider matters without even reading them or having them printed. I think this matter should be reconsidered, and then I think we should take some little time to investigate and see whether matters are right or not.

Cries of "Question," "Question."

Mr. Bowers—Mr. President, calling for the question by the delegates on this floor is not speaking to a motion; and while the gentleman has correctly stated that rules have long since been thrown to the wind in this Convention, and you are now commencing to reap the fruits of such actions, it would seem at least due to the dignity of the Convention that the Chair prevent the calling of "Question," "Question."

The President pro tem.—The Convention will be in order and decorum will be observed. The Chair especially desires to conduct the business of the Convention according to parliamentary practices, as he understands it, and in strict conformity to the rules adopted by the Convention. The secretary will call the roll upon the reconsideration of this vote.

Mr. Veeder—Mr. President, I desire to withdraw my call for the ayes and noes.

The President pro tem.—The chair knows of no other way to reconsider than by calling the ayes and noes. It must be reconsidered in the same manner in which it was passed. The secretary will call the roll.

The secretary called the roll with the following result:

Ayes—Messrs. Abbott, Acker, Ack-
erly, Arnold, Baker, Barhite, Barnum,

Barrow, Becker, Bigelow, Bowers, Brown, E. A.; Burr, Carter, Church, Clark, G. W.; Clark, H. A.; Cookinham, Cornwell, Countryman, Crosby, Danforth, Davenport, Davies, J. C.; Deady, Deterling, Dickey, Doty, Durfee, Emmet, Faber Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Galinger, Gibney, Giegerich, Gilbert, Goeller, Goodelle, Green, A. H.; Green, J. I.; Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Hotchkiss, Hottenroth, Jacobs, Johnson, I. Sam; Kurth, Lauterbach, Lester, Lewis, C. H.; Lewis, M. E.; Lincoln, Lyon, Manley, Mantanye, Marshall, McDonough, McIntyre, McKinsty, McLaughlin, C. B.; McMillan, Mereness, Morton, Nichols, W. H.; Nicoll, De L.; Nostrand, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Rogers, Root, Spencer, Springweiler, Steele, A. B.; Steele, W. H.; Storm, Sullivan, W.; Tekulsky, Turner, Vedder, Vogt, Whitmyer, Woodward, President—103.

Noes—Messrs. Maybee, Moore, Speer—3.

The President pro tem.—The reconsideration is duly passed.

Mr. Vedder—Mr. President, I now move that this proposition be recommitted to the committee on future amendments with instructions to report forthwith as follows, retaining its place on third reading of bills, its present place.

The President pro tem put the question on the motion of Mr. Vedder, and it was determined in the affirmative.

The secretary read the amendment, as follows: After the word "majority," in line 16, page 2, strike out the words "of such electors" and insert in place thereof the words "of the electors voting thereon."

Mr. Marshall—Mr. President, I desire to state, in respect to this matter, that it is purely a typographical error, if it is an error at all, but the meaning, I think, is unchanged.

The President pro tem.—The secretary will read the proposed constitutional amendment, as amended, through, for the third reading of the amendment.

The secretary read the amendment, as amended, through.

The President pro tem.—This proposed constitutional amendment having had three several readings, the question is now upon its final passage.

Those in favor will say aye and those opposed will say no.

The secretary called the roll, with the following result:

Ayes—Messrs. Abbott, Acker, Ackery, Arnold, Barhite, Barnum, Barrow, Becker, Bigelow, Brown, E. A.; Brown, E. R.; Burr, Cady, Carter, Cassidy, Clark, G. W.; Clark, H. A.; Coleman, Cookinham, Cornwell, Crosby, Davenport, Davies, J. C.; Deady, Deterling, Deyo, Dickey, Doty, Durfee, Emmet, Faber, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Galinger, Gibney, Giegerich, Gilbert, Goeller, Goodelle, Green, A. H.; Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam; Johnson, J.; Kellogg, Lauterbach, Lester, Lewis, C. H.; Lewis, M. E.; Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McKinsty, McLaughlin, C. B.; McMillan, Mereness, Morton, Nichols, W. H.; Nicoll, De L.; Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Rogers, Root, Schumaker, Spencer, Springweiler, Steele, A. B.; Steele, W. H.; Storm, Sullivan, W.; Tekulsky, Tibbetts, Vedder, Vogt, Wellington, Whitmyer, Woodward, President—103.

Noes—Messrs. Bowers, Cochran, Danforth, Dean, Hottenroth, Maybee, Mulqueen, Peabody, Sandford, Speer, Titus, Veeder—13.

The President pro tem—This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

The next in order is third reading No. 31. The secretary will read the title.

The secretary read the amendment by title, as follows:

"Proposed constitutional amendment to amend section 7 of article 8 of the Constitution, relative to the liability of the stockholders of banking corporations."

The President pro tem—One hour is allowed by the rules for debate.

If no one desires to debate it, the secretary will read the proposed constitutional amendment through.

The secretary read the proposed constitutional amendment, as follows:

"Section 7 of article 8 of the Constitution of the State of New York is hereby amended so as to read as follows:

"Section 7. The stockholders of every corporation and joint-stock association, for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

The President pro tem—This proposed constitutional amendment having had three several readings, the question now is upon its final passage. Those in favor will say aye and those opposed will say no.

The secretary proceeded to call the roll.

Mr. Root—Mr. President, I wish to explain my vote. I am going to vote against this amendment.

The President pro tem—The gentleman's explanation is forbidden by a late rule of his committee.

Mr. McMillan—Mr. President, I ask that the gentleman have unanimous consent to explain his vote.

Mr. Root—I was not aware of the change in the rules, Mr. President.

I shall vote against this proposition because I see that under the form of limiting the liability of joint-stock associations for banking purposes, it really exempts partners engaged in banking from the general liability to which they are now subject. I have no objection whatever to putting the stockholders of banking corporations organized under the laws of the State on the same footing as the stockholders of national banks, but I believe that a joint-stock association for banking purposes, which is merely a copartnership, should be subject to the same liability as other copartnerships, and I think it is all wrong that in the Constitution we should include a provision which limits the liability of that particular kind of partnership. I, therefore, vote no.

Mr. Bowers—Mr. President, it is quite evident that if the statement made by the gentleman from New York is correct, this amendment ought not to have passed; and it is quite evident, also, that he is correct, if anyone stops to consider the question for a moment.

Mr. Schumaker—He is not correct. It is in the present Constitution.

Mr. Bowers—That is no answer.

Mr. Marshall—Mr. President, I desire to have my name called in order

to make an explanation. I think this is the wrong time to make an attack on the constitutional article. A joint stock association, as everybody knows, is a quasi-corporation, and has nothing to do with a partnership. The language is in the present Constitution, without any change in that regard.

The amendment was adopted by the following vote:

Ayes—Messrs. Abbott, Acker, Ackertly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Burr, Cady, Carter, Church, Clark, G. W.; Cookinham, Cornwell, Countryman, Crosby, Davies, J. C.; Deterling, Dickey, Doty, Durfee, Emmet, Faber, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Fuller, O. A.; Galingier, Gibney, Green, A. H.; Green, J. I.; Hamlin, Hawley, Hecker, Hedges, Holls, Hotchkiss, Jacobs, Johnson, J.; Kinkel, Kurth, Lauterbach, Lester, Lewis, C. H.; Lewis, M. E.; Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McKinstry, McMillan, Mereness, Morton, Nichols, W. H.; Nicoll, De L.; Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parmenter, Pashley, Phipps, Platzek, Pool, Powell, Roche, Rogers, Schumaker, Smith, Springweiller, Steele, A. B.; Steele, W. H.; Storm, Sullivan, W.; Tekulsky, Tibbetts, Titus, Turner, Vogt, Wellington, Whitmyer—88.

Noes—Messrs. Bigelow, Blake, Bowers, Brown, E. A.; Cassidy, Clark, H. A.; Coleman, Danforth, Davenport, Deady, Dean, Deyo, Forbes, Goeller, Hottenroth, Johnson, I. Sam; Kellogg, Mantanye, Maybee, McLaughlin, C. B.; Moore, Mulqueen, Parkhurst, Peabody, Putnam, Root, Sandford, Spencer, Vedder, Veeder, Woodward, President—32.

The President—This proposed constitutional amendment having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

The next in order is printed No. 425, third reading No. 32, which the secretary will read by title.

The secretary read the amendment by title as follows: "Proposed constitutional amendment to amend section 10, article 1 of the Constitution," in relation to the suppression of gambling.

Mr. Choate—Mr. President, I hope that this amendment will not be rushed through before we have time

to ascertain even what it is; and in order that it may not be, I move to recommit to the committee from which it originated, with instructions to report forthwith an amendment striking out the words "or any other kind of gambling." I do not like the amendment in that shape. As it now stands, it is exactly as if it read, "or any kind of gambling."

Mr. Veeder—Mr. President, I rise to a point of order again. The gentleman is out of order. This is on third reading, and I understand he has no right to explain his vote.

Mr. Choate—I am not explaining my vote. I am moving to recommit.

The President pro tempore—The title of the amendment having been read, one hour is allowed by the rules for debate.

Mr. Choate—Mr. President, to lay the foundation for discussion, I make my motion to recommit to the committee on preamble, with instructions to report forthwith an amendment striking out the words "or any other kind of gambling." For one, I do not like the presence of those words in the article if it is to be adopted. In the first place it takes all the force away from the specifications of pool selling and book-making, which I suppose are the evils to be prohibited by constitutional enactment, and makes it read exactly as if it were "or any kind of gambling hereafter be authorized or allowed within this State."

Now, the laws as they stand, are ample for the prohibition of gambling. The evil to be reached, as I understand by this amendment, are the special forms of pool selling and book-making, whatever they may be; well known generally I suppose, to the members of this Convention, although I confess to some personal and individual lack of knowledge on the subject. I suppose they aim at the possibility of the Legislature passing or keeping upon the statute books of this State such an enactment as the Ives Pool bill, so-called.

It is not necessary to incite the Legislature to prohibit other forms of gambling. As the law now stands, it is so broad, so deep, so far reaching, as to make criminals of many innocently-intending people, including a vast number of church members; and for one, I do not desire to see it made any worse by being carried into the Constitution. If, in one of our own families, there happens to be a little card playing for a little money, the law as it now stands makes that a crime, as I am told. In the clubs, to which even possibly some of the members of this Convention may resort, the law as it now stands makes card playing for a little money, a crime. Isn't that

enough? Do you want to incite a Legislature to go further and strike deeper and come nearer home to every individual than the laws now do on the subject of gambling? No. What you want to reach is this evil which the Legislature has legalized, making one law in Utica and another law at Gravenstein; one law on one side of a fence, and another law on another side of a fence, and a condition of law in regard to this matter of pool-selling and book-making, which is certainly very iniquitous.

Now, do not let us make ourselves—shall I say ridiculous?—in seeking to reach and prohibit and render absolutely impossible for the future, that evil. Do not let us carry into the Constitution a provision against these lesser and minor and more virtuous kinds of gambling which are already prohibited by law, and a crime. That is the point of my amendment. The effect of the amendment, if carried, will be, to strike out the words “or any other kind of gambling.”

Mr. Veeder—Mr. President, I am astonished at the admission of the President of this Convention. The idea that the people of the State of New York by its representatives here, are willing to permit gambling in all forms except pool-selling and book-making and lotteries! That is the substance and the meaning of the amendment proposed, that we shall allow gambling to go on in all its forms, in the churches, as the President says, and in private families, the President says; corrupting the morals of everybody, so long as you do not go into pool-selling and book-making. I am astonished. I submit, sir, that the inventive genius of the men who are capable of conducting pool-selling and book-making, if we are limited to those matters, will devise some means other than pool-selling and book-making by which they can gamble just the same as ever. And so there is no relief against these evils, except to go to the root of them, and stop all forms of gambling. I submit that the amendment proposed by the President, if adopted, will nullify it entirely. The Legislature may have enacted laws and it will be admitted that they have been violated. He admits that. But is that any reason why the Constitutional Convention should not try to stop this evil? I submit that I never heard of a proposition of the kind, that we shall encourage gambling, instead of trying to prohibit it.

Mr. Bigelow—Mr. President I would like to ask the gentleman whether he wishes to prevent the Legislature, when it meets, from gambling for their

seats, as we gambled for our seats in this Convention?

Mr. Veeder—Mr. President, there was no gambling about it. Gambling means something entirely different from what the gentleman understands it to mean.

Mr. Schumaker—Mr. President, I am as much astonished at my friend from Kings as he is astonished at the President. All forms of gambling are prohibited by law in this State, except the special laws which were passed by the Legislature in relation to book-making and pool selling on the race courses of the State. There are special laws in relation to the selling of pools and book making in the different counties of the State, and that is the kind of thing which the Constitution of this State is attempting to interdict. There are no cases that can be brought up which the State laws are not now sufficient to stop and to suppress. All sorts of gambling is suppressed, except the individual instances of pool selling and book making, which stalk through this State like a ghost, which are the crying evils of the State, and those are supposed to be affected by this Constitutional amendment; and there should be no other, because there are sufficient laws now to arrest gambling of any other description except those which have been specified by the Legislature.

Mr. President, you cannot stop gambling, that is impossible. They will do it in all sorts of queer ways and in different manners. It is impossible to stop men from betting. They will bet at their bedsides. They will bet early in the morning and late at night, in such a manner that they cannot be detected. But the crying evil of the day is the race track gambling, and this Convention has almost unanimously decided to stop that if it can. I believe that the Legislature can control that matter; but, as this Convention has almost unanimously decided that it should stop that form of gambling, I, for one, am in favor of this constitutional amendment; but when it is to be sent throughout the State, into every church and into every family, to prevent the little amusements of the family, and to prevent the church from being assisted by innocent lotteries; when those things are to be ridiculed and suppressed, I for one am not willing to lend my voice to having it put into the Constitution of the State to any such extent as that. In some places the poor people of a church have been indicted for selling tickets for a book or a picture, but it has been discountenanced. The people of the State have frowned it down,

and now, from one end of the State to the other, little lotteries for the selling of pictures and books and trifles of that sort are tolerated, and the grand juries do not pay any attention to it. In some cases, they have indicted those people who have indulged in those little innocent amusements of selling pictures and books and other things that have been given to the church for the purpose of paying a debt or advancing the Christian religion throughout the country. I, for one, am glad of the opportunity to say here that the race track gambling should be stopped if it is possible. I do not know as it is possible. I do not think that the amendment to the Constitution is broad enough. I insisted in the committee on preamble that it should include all sorts of race track gambling, pool-selling; every kind and nature of gambling upon horse races, but they saw fit to introduce this amendment instead of the one that I was in favor of. I am satisfied that this will do some good, and, therefore, I hope that the President's good intention will prevail in this Convention, and that we will stop the race track gambling of every description. The reason that lotteries have been specified in the Constitution is, that before the Convention of 1821, lotteries were tolerated in this State and it was necessary to stop them.

Mr. Nicoll—Mr. President, are we to see repeated, in this Convention, one of those extraordinary performances with which the practice of the last four months has made us familiar? Are we to see the Convention, by an almost unanimous vote, condemn certain unlawful and immoral practices, and and then are we to see the President of this Convention, or the leader of the majority, or some other distinguished member, move to amend a salutary amendment and emasculate and have the great majority of this Convention follow like sheep, to their own stultification? Are we to be treated, in the last hours of this Convention, to another illustration of the inconsistency and utter incapacity of a body of lawyers to adhere to their own expressed opinions and convictions? I hope not, Mr. President. By an almost unanimous vote this afternoon we adopted this amendment, declaring what? That we were opposed to gambling; either book-making or pool-selling, or any other kind of gambling. Does that principle deserve a place in our Constitution, or does it not? Are we engaged simply in the business of hitting at this race track or that race track, or some other race track, or county fair, or are we opposed as a moral principle, as a governmental principle, to the whole immoral practice of gambling, whether it assume one form or another?

Now it is proposed to emasculate this amendment by taking out the words "any other kind of gambling." Why, what do you suppose will happen? Do you know how adroit and clever the professional gambler is? If he cannot be a bookmaker or a pool-seller, do you not think he will find some other form of gambling on the race track? Of course he will. You might just as well wipe this amendment out altogether as to take out the words "any other kind of gambling." I am not only astonished at the proposition of the President, I am paralysed by it. That we should be deliberately invited to reverse our record of this afternoon, and declare to the people of this State that while we are opposed to book-making and pool-selling, we favor, perhaps, gambling in the stock exchange or gambling at the faro table, or gambling of some other kind, or in some other place.

Let us be perfectly honest about this thing. We are either in favor of a Constitutional declaration against gambling, or we are not. Many other States have it. It is nothing new or strange. It is not, as I have been told since I made my remarks this afternoon, a mere piece of professional reform.

Mr. Root---Mr. President, will the gentleman permit me to ask him a question?

Mr. Nicoll---Certainly.

Mr. Root---Since the gentleman says "let us be perfectly honest about this thing," will he permit me to ask him, in his own words, whether he is opposed to every form of gambling? (Laughter.)

Mr. Nicoll--Every form of gambling, Mr. President; and if for no other reason, as a matter of personal profit. (Laughter.) I am opposed to it. We are all gentleman together. We have had our little games. But that is not the question here. It is a much larger and greater question, whether gambling is in itself a vice which deserves our condemnation in the organic law; whether or not we ought to put it there; whether or not if we condemn book-making and pool-selling and so forth, we ought not to extend it so that all other kinds of gambling shall be forbidden. You are not going to stop it by that. Men will continue to gamble, I suppose, as long as they live; but that is not the question. The question is whether or not this State stands with the other great States of the Union upon the moral side of great questions, or whether it goes half way and gives a mere beggarly endorsement of a moral principle.

I sincerely hope, Mr. President, that we will not treat the people of this State to the spectacle of discriminating between kinds of gambling, and while we condemn one, indirectly approve another.

Mr. Abbott---Mr. President, I should have availed myself of the opportunity to explain my vote but for the reason that the rule has been suspended. I will only take a moment, and I desire to define my position.

First, then, as an individual, I am opposed to all kinds of betting, from fan-tan and fly-loo to the various grades of horse racing, poker playing, gambling on elections and church lotteries. As an individual I am opposed to all these.

Secondly, as a Republican simply, I am opposed to this proposition, because I believe it will lose us fifty thousand votes in this State and result in the creation of a large political campaign fund, which may lose us this Constitution, and may lose us the Governor and other officers.

Thirdly, as a member of this Constitutional Convention, putting my individual preference aside and my partisanship, and desiring to act only for the good of the State, I am opposed to this proposition, because I believe it is purely a matter of legislation. I believe that the Legislature is nearer to the people than we are. It comes fresh from the people every year, and when the people demand a suppression of gambling, and public sentiment demands it, the Legislature will be ready and willing to enact the laws, and those laws may be enforced. As they stand now, our statute books are full of obsolete laws. I am not in favor of putting into this Constitution a provision which every delegate in this Convention knows will be disregarded every hour from now until election time and for all time until public sentiment demands a change in this respect. I do not believe that saying in this Constitution that we prohibit gambling of any kind will have any effect upon the people. I believe that public sentiment does not demand it, and that public sentiment will not sustain it, and that it is only cumbering the Constitution by enacting it into the organic law. I believe the Legislature can take care of this question, and will take care of it as soon as the people demand it. I shall, therefore, oppose this proposition.

Mr. Dickey---Mr. President, unless better reasons can be given than the President of this Convention has given for the proposed amendment, it should

be voted down, because the only reason that he at all gave us was, that it would prohibit, if left as it was, some of the present forms of gambling. Anything that is gambling and may be properly called gambling, should be prohibited by this Constitutional Convention, and they should do as much good in that direction as lies in their power. We used to have a preacher down our way who used to say, "Do as I tell you, don't do as I do." And so Mr. Nicoll very well says, "Don't follow my example, but do as I tell you." Do good. Protect him against himself, even to his profit.

Now, I look upon this amendment as here written, as a very important one. I am sorry to say I shall dissent from the views of Judge Abbott, who stands here and says that putting this moral matter in our Constitution may lose us fifty thousand votes. If it will array against us the wicked and bad and vile of this State, wont it on the other hand array in our favor the good and moral people of the State without regard to party? And whether it will or not, do not let us here legislate as he calls it, in behalf of the vile and impure for the sake of getting their votes or keeping their money, against our Constitution. Let us do the manly, honest, right thing, even the heavens fall.

Mr. J. Johnson---Mr. President, this amendment is aimed at a well known form of gambling; a form which stands as stood the lottery before the Convention of 1846, which has proved more powerful than the Legislature, and, therefore, needs the power of a Constitutional Convention to prohibit it. It is worse than the lottery, because it is branded as a cancer everywhere save within the enclosures where it is allowed to go on unimpeded. Now, no one appears to defend that vice. No one in this Convention. There is no one but what says it should be stopped, and no one but what agrees that the Legislature is impotent to stop it, and this is the only place to stop it. And yet, although no one says that we should not stop it, I want to say to the gentlemen of this Convention that this measure is at this instant in the gravest danger. Why? Because the attempt is to make us scatter our blow. Gambling is prohibited by statute. The penal code is aimed against it. This form of pool-selling is allowed by statute. There is no more reason for putting into this amendment a provision against gambling as ordinarily carried on than there is for putting in a provision against

murder or burglary. It is simply making us scatter our blows, and attempting to put into the Constitution that which will make this amendment unpopular and impossible of adoption.

Mr. Bigelow—Mr. President, will the gentleman allow me to ask him a question? I want to know if the gentleman is aware that this provision protects the Ives bill. It does not operate except hereafter. It says that "the State shall not hereafter."

Mr. Johnson—Mr. President, in answer to the gentleman, I should suggest the amendment "or carried on." I think it would be well, although I would not press the amendment, to say "authorized, allowed or carried on," if there is any doubt about it. But I think this is sufficient. That would make it stronger.

Now, sir, with this vice rampant before us, with it permeating every grade of society, the morals of the young being corrupted and their lives destroyed; confidence between employer and employe gone; let us take this thing by the throat, and not scatter our blows. (Applause.)

Sir, I have heard the word "emasculate" from sneering lips before to-night, and it was just as well said then as now. Everything is emasculated that does any good, and nothing is worthy of the speaker save what is impossible. I want to take this vice by the throat, and there is no emasculative blow that will do it. (Applause.)

Mr. E. R. Brown—Mr. President, I regret very much to disagree with the distinguished President of this Convention, but it seems to me in regard to his amendment that it is about on a par with the proposition to reject the free pass amendment, because a notary public or a commissioner of deeds could not enjoy the privilege of a free pass without committing a crime.

Now, a little more careful attention to the wording of this amendment it seems to me would satisfy the delegates that there was no occasion for the purpose of protecting the matters to which the President refers, to wit, his own private enjoyment, from the provisions of this section. It says that the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling, shall not hereafter be authorized or allowed, by an affirmative law, or tolerated by the sanction of judicial decisions or of legislative enactment. And the only instance that we have now on the statute books of this State, and the only instance that we have even in the judicial decisions of the court, is this Ives Pool bill, and it was because that bill was an affirmative sanction of gambling that this

measure was brought before this body. And it says, furthermore, in relation to violations of this section, that the Legislature shall pass appropriate laws. That is, it shall pass severe laws against gambling, which is destructive of the public morals, and that it shall pass temperate, moderate and innoxious laws against the gambling which the President desires to enjoy.

Now, Mr. President, I have also heard it suggested that the stock exchange might be affected by this amendment. Why, Mr. President, it is now illegal for the stock exchange to gamble. The Court of Appeals have decided that dealings in futures where it is not intended that the goods shall be actually delivered, but it is simply a bet upon the future price, makes an illegal contract, makes no contract. It is not legalized by the Court of Appeals. It is not legalized by statute. And this says that if it is gambling it shall never be legalized by statute; and so far as the piccadillos of the gentlemen who sit upon this floor are concerned, I think that they would be excepted by universal consent from the execution of any severe penalties. I regret that the President should be willing to make an amendment to this Constitution which would permit, as I believe, within a year after the adoption of this amendment, in some other device by which these men would be enabled to practice the very evil against which this amendment is directed. And seriously and earnestly, I believe that it is a necessary thing that this Constitutional Convention should say that there never should be a law affirmatively justifying gambling.

Mr. Barhite—Mr. President, I do not believe that this Convention can adopt an amendment upon the subject of gambling which is too broad or too sweeping in its provisions. I do not believe, sir, that we should say, even by implication, that we are opposed to book-making and pool-selling, but that other forms of gambling, in our opinions, may be allowed. I believe that this amendment should be so broad as to prohibit not only the boy upon the street, who gambles away a few pennies which he may earn from day to day, but it should prevent poker playing in the Union club in New York. If the gentlemen of that institution desire to engage in a legitimate game of chance, let them enter the domain of politics; they will find something worthy of their ability. As has been said on the floor of this house, and well said, if we restrict this simply to the well understood terms of book-making and pool-selling, the wit of the gamblers and their attorneys

will be sufficient for the occasion, and it will not be three months after this amendment goes into effect before they will have some other device which is not within the prohibition of the Constitution, but serves their purpose equally well. I believe that there is no measure that has been passed upon by this Convention which will be more popular with the people of the State of New York than this very amendment which we have under consideration at the present time. We have endeavored here to serve all classes of persons. We have passed amendments which have been asked for by the corporation; we have passed amendments which have been asked for by the laboring men; we have passed amendments which have been asked for by the farmers; we have passed amendments which have been asked for by the canal men; and now, at this late hour, let us round up our work by passing an amendment which is asked for by every honest and intelligent citizen of the State of New York.

Mr. Davies—Mr. President, I have observed during the deliberations of this Convention, when anything of real importance is sought to be put into the Constitution, that we are told by members about the floor repeatedly that we are trenching upon the powers of the Legislature.

Mr. C. B. McLaughlin—Mr. President, I rise to a point of order. I have been trying for about ten minutes to get the chair's attention. I think this time should be divided between those speaking against and those in favor of this proposition. I desire to speak against it.

Mr. Davies—Mr. President, I have not troubled this Convention with many speeches nor with many motions. I have taken up about one-tenth of the time that my friend from Essex has; and I move to extend the time of this session until this question is disposed of.

The President pro tempore put the question on agreeing to the motion of Mr. Davies.

Mr. Root—Mr. President, I do not know what that means. I do not believe the Convention knows what it means—

Mr. Mulqueen—I move, Mr. President, as an amendment, that the session be extended until twelve o'clock.

Mr. Root—It seems to me, sir, that something definite ought to be said on the subject. The motion to extend the session of the Convention until this matter is disposed of may carry it into next month.

Mr. Davies—I withdraw that motion and make it one hour.

Mr. Root—Well, Mr. President, is there any occasion for extending the session one hour more?

Mr. Moore—Yes; I want to speak on the subject. (Laughter.)

Mr. Root—Very well. If Judge Moore wants to speak I withdraw my objection to the extension by one hour.

The President pro tempore—A motion is made to extend the session until eleven o'clock, and that is amended by making it twelve o'clock. Extending the time of the session does not extend the time of this debate, however.

The President pro tempore put the question on extending the session until twelve o'clock, and it was determined in the affirmative.

Mr. Davies—Mr. President, I, for one, do not propose to get under the petticoats of the Legislature in this matter. I was a member of the Legislature in 1887 when this gambling act known as the Ives pool bill was enacted. The Republican party was in a slight majority in both branches. I confess that at that time I went home with a blush upon my cheek for my party. (Democratic applause.) It did not matter that in the Senate every Democrat voted for it (Republican laughter); it did not matter that in the house every Democrat save three voted for it—the Republican party was in the majority in both branches, and they were held responsible. The Republican party is in the majority in this Convention, and they will be held responsible for the acts of this Convention; and they cannot escape it. Now, Mr. President, the State of Louisiana, which we are wont to call a half civilized State, has outlawed the Louisiana lottery. They had a hard fight to get through with it. The lottery offered them immense sums for the privilege; yet the State spurned it and placed in its organic law a prohibition that will stand there forever against gambling of any sort; and it is broad enough to cover gambling of any sort in the State of Louisiana. We saw in our neighboring commonwealth (New Jersey), the struggle that was waged with the race tracks of that State. We saw how morality triumphed; we saw the people come out ahead there. And, Mr. President, I am not awed by this suggestion that the pool men will raise a large fund of money and put it into the campaign against our party. Why, Mr. President, they have been doing that every year since the Ives bill became a law, and it is a notorious fact. Now I say, Mr. President, that we cannot afford to avoid passing this amendment. I hear my friend from Brooklyn (Mr. Schumaker)—and I am not sure whether he spoke sarcastically or not, speak about the cause of religion being supported by innocent

gambling and innocent lotteries, and the poor little churches that are kept open by such means. Now I know of no such churches that are kept open by gambling or by lotteries; and if there are any such churches, Mr. President, I say, for the cause of religion, for the cause of God and country, they would better be closed. (Applause.) I cannot, Mr. President, agree with our distinguished President upon this question. I am not in favor of emasculating this measure by the dotting of an "i" or the crossing of a "t." I want it precisely as it is. I think it is right as it is, and I hope for the sake of the cause of good government, for the cause of every mother, for the cause of every wife whose husband, whose son, is addicted to this curse of gambling, that this Convention will pass this amendment and thus receive the commendations of every lover of good in the land.

Mr. McIntyre---Mr. President, I would like to know if there is any limit to the time allowed to the speakers?

The President---Five minutes. If the Chair is mistaken about that the Convention will correct him.

Mr. McLaughlin---Mr. President, so far as this amendment relates to the sale of lottery tickets, pool-selling or book-making, I am in favor of it. But I am opposed to incorporating in this amendment that portion of it relating to any other kind of gambling. I am opposed to it, because I believe the effect of it is to kill the very measure which is sought here to adopt. Now, let us see what is the legal effect of this proposed amendment. Is it self educating? No. It requires legislation to carry it into effect, and very many of the men who are seeking to pass this amendment know, as I believe, that this amendment has no effect until the Legislature has passed upon it. Ah, but see how much further it goes. If it can be construed into repealing the Ives pool bill, then it repeals every law on the statute books of this State in reference to gambling. Now, we have upon the statute books of this State stringent laws in reference to gambling.

Mr. Veeder---Will the gentleman allow a question?

Mr. McLaughlin---I have only five minutes and I do not care to be interrupted. Now, as I have said, we have upon the statute books of this State stringent laws against every other kind of gambling, and the only thing here sought to be remedied is the operation of the Ives pool bill. Then why not confine this amendment to that? If that is the thing sought to be remedied, and the measure is against that, I have no objection. But when you have incorporated in this amendment

not only that, but every other kind of gambling, and if the effect is to repeal the Ives pool bill, then you repeal every other statute in reference to every other kind of gambling. Now, if that is true, then you have to get legislation in order to provide for the penalties for the violation of law. It is not self-executing. And another thing. The mere fact that we oppose this amendment cannot be construed into a demonstration that delegates are in favor of gambling. Why, how absurd it would be to provide in the Constitution that a man should not steal or murder. I contend that the criticism upon this proposed amendment is just. Limit it to the very thing that you want to eradicate, and to that extent I am in favor of it.

Mr. Veeder---Mr. President, I am astonished at the argument being advanced by a lawyer that because you abrogate a law that licenses gambling you consequently abrogate laws that prohibit gambling. It is an absurdity. There is nothing that allows gambling except the Ives pool bill, and if you abrogate that it does not follow that you abolish the laws that prohibit gambling. I am astonished, as I said before, that a lawyer should make a remark of that kind, and urge it upon the Convention. The proposition in this constitutional amendment is that gambling shall not be allowed, leaving it to legislative declaration as to what shall be the penalty for the violation. I have heard the gentleman speak before against putting legislation into the Constitution. That was the object of the gentleman who proposed this measure, to avoid legislation. It is declared that this gambling shall stop, and that the Legislature shall fix a penalty for the violation of that provision of the Constitution.

Mr. Dean---Mr. President, I had supposed when I came to this Convention that it was the duty and the obligation of a Constitutional Convention to limit the action of the Legislature and to define the duties of the public officials of the State. I infer, however, from the discussion upon this floor, and particularly this evening, that the object of a Constitutional Convention is to do good to somebody. If that is the purpose of a Constitutional Convention, if that is what we want in the fundamental law, when I submit that a formula for the preparation of a soothing syrup would constitute a very efficacious chapter. In view of the people who have been playing the baby act here to-night and I do not refer exclusively to the gentleman from Newburgh (Mr. Dickey), that would be an

exceedingly valuable acquisition to this Constitution.

Mr. Dickey—Mr. President, I rise to a point of order.

The President pro tempore—The gentleman will state his point of order.

Mr. Dickey—The gentleman is impertinent and personal in his remarks.

The President pro tempore—The gentleman will please cease being impertinent and personal in his remarks and proceed in order.

Mr. Dean—I was about to address myself to the subject matter, Mr. President. I have at the present time small wagers with three gentlemen upon this floor who are to-night advocating this anti-lottery, anti-gambling proposition. (Laughter.) I do not consider that I have committed any great moral wrong or that these gentlemen have done so. It is simply the inconsistency that I am opposed to, and I am opposed to hypocrisy in the Constitution above everything else.

Mr. Cassidy—Mr. President, may I ask the gentleman a question.

Mr. Dean—Certainly.

Mr. Cassidy—Will the gentleman state what his wagers are on, and how much they are?

Mr. Dean—Upon the probability of the work of this Convention being ratified by the people at the polls. (Laughter.)

Mr. McIntyre—Mr. President, I should hardly think that this was an appropriate discussion for the last hours of this Convention, upon a subject that was passed upon almost unanimously to-day. This article was advanced to third reading, and now we find ourselves all by the ears and everybody is taking a different view of the matter and thinking to escape the subject of gambling. It is now proposed to stop the sale of lottery tickets, pool selling and book making, and to stop there. It will not be twenty-four hours before they would have some new scheme of gambling, and the evil would still exist, and still they could not be punished. As far as gambling is concerned in its relation to the statutes of this State, if gentlemen sit down in their houses and play a game of draw poker, I do not know that there is any law that will punish them for doing so. It is the parties who keep the gambling places that are subject to the penalties prescribed for that. But it is just as bad for gentlemen to play draw poker as it is for them to bet on a horse race, and I see no difference between the two; and when people come here and try to condemn one person for doing a thing that they will not condemn in themselves, it seems to me that that is a very strange position to take. To my mind it is a ridicu-

lous position and we make ourselves here ridiculous if we endorse that proposition. I am reminded of the time when this article, a short time ago, was wanted to be advanced, when some thirty or forty men arose and were so anxious to get at this, so that they could vote for it, so that they could spread themselves on the record and go before the people as being opposed to gambling. Now that they have it, now that they have the opportunity to vote for it, they want to skulk behind it and kill it by technicalities; they are not in favor of abolishing gambling and do not have the moral courage to get up and say so. That is where they stand here; and I am surprised at it. Suppose it does stop poker playing; suppose it does stop church gambling, what is the harm done? That is what ought to be done; and I, for one, say let us not quibble over this; let us pass it broadly let us put it into the Constitution. You will never get the Legislature to do anything about it. Gentlemen that spend half their leisure hours in playing draw poker when they are here making laws (applause), will not pass any law for the suppression of gambling. I believe in calling things by their right name, and not in trying to shirk or shun them. I was not for bringing this up myself because I almost believe it will be a dead letter. Gambling has gone to such an extent that you must almost eradicate the human nature of the citizens of this country in order to stop it. But now that we have got at it let us take it by the throat, as far as the Constitution is concerned, and let us show the people that we are not ashamed and not afraid to put it into the Constitution. Why, you propose to put in a provision against lotteries, and still you say you would not include gambling. Is not lottery as much a subject of legislation as gambling? If you do not put it in there the people will say you are afraid to put it in; and for one I would not stultify my vote given here within six hours and vote contrary to that. I hope members will not change their votes. If there is anything that I dislike in this world it is to see people commit a folly and then spring down to the front of the house and with hands raised cry, "Mr. Chairman, Mr. Chairman, I change from no to aye," "from aye to no."

Mr. Woodward—Mr. President, I wish to say a few words on this question. I am in favor of this amendment, and I am not one of those who want to strike gambling out of this proposition. It reminds me very much of the justice who had half a dozen or so of drunks drawn up before him. When the first one came up the justice said: "What did you get drunk on?" "Why,

I got drunk on beer." "Well," said he, "you get drunk on beer, you shall pay \$15." The next one was brought up and asked, "What did you get drunk on?" "I got drunk on cider." "You got drunk on cider; you shall pay \$12." To the next one, "What did you get drunk on?" "Why, I got drunk on whisky." "Well, you shall pay \$10." When the last one came up he was asked, "What did you get drunk on?" "I got drunk on sherry." "Go you way," said the justice, "go you way; I get drunk on that myself sometimes." (Great Laughter and applause.) It strikes me that some of these gentlemen in favor of this amendment proposed by our honored President, are like the justice—he got drunk on sherry himself sometimes. (Renewed laughter.) For that reason, among others, I am in favor of this amendment just as it stands. It is none too strong. I am not in the habit of gambling myself, and, therefore, I have not to put on any cloak to get behind. I propose to keep my skirts clean from gambling and I presume a great many others here do. I think we should not follow the lead of the justice and get drunk on sherry ourselves sometimes.

Mr. Lauterbach—Mr. President, I shall be surprised if the object which was sought to be accomplished by the committee on preamble when it submitted the amendment now under consideration to the Convention, after a most thorough examination of the subject, and after completely remodelling the amendment as originally submitted, shall not receive substantially the universal assent of delegates on both sides of the house.

During the debate considerations of a political character were presented as affecting the question under deliberation.

If there is any one matter that has come before this Convention in which politics and political expediency or expediency in any other form, should be banished from consideration, it is this theme.

The subject involved has already savored too much of politics. The infamy which this amendment seeks to destroy is the creature of politics and of the basest order of politics.

It is time that the subject covered by the amendment should be considered in the light of ethics, morality and propriety, so that the State itself, awakening to a consciousness of the iniquitous policy which it itself has pursued shall conduct itself decently, and not indecently.

It is the duty of this Constitutional Convention without stopping, as it is now doing to trifle with phraseology or to play with words or to make nice shadings among fine-spun ideas, to pro-

ceed promptly to do its share in abolishing the co-partnership of the State, with criminals in a business otherwise conceded to be criminal, an alliance which everyone will agree will be found unparalleled in the record of any civilized community.

This great and powerful State has engrafted in its Constitution a prohibition against lotteries of any description and has so carefully guarded its citizens against indulgence in that vice that to-day a child taking a chance in the contents of a toy grab-bag is guilty of a violation of constitutional law.

It has annihilated, and properly so, all systems of lottery-playing however praiseworthy might be the ultimate purpose for which the lottery might be conducted.

In its Penal Code are provisions making criminal all species of betting and gaming, and especially all indulgence in bets or wagers of any description at races or trials of speed between horses or other animals, and it would be justly the subject of condemnation did these laws, which prevail in every State throughout the Union, not maintain here.

Can it be believed then, that in 1887 a compact was solemnly entered into here in these legislative halls, deliberately entered into, passed by assembly, passed by senate, signed by the Governor, in spite of the protest of the press and of the pulpit which said to the horse-track gambler in effect:

"If you will establish race tracks throughout the State; if you will put your ill-gotten millions in this form of enterprise, we will legitimize the business of horse racing, and we will do more. We will render lawful the pursuit of pool-selling and of book-making; we will declare that which is a felony everywhere and anywhere throughout the State of New York, a felony which has met with our severest condemnation and which has had imposed upon it the most restrictive provisions of our Penal Code, if pursued by you as your vocation, to be a felony no longer, but to be a pursuit receiving the express sanction and approval of the Empire State. Yes, if you, whom the State has ostracised and driven from the pale of decent society, will establish race tracks, will surround them with sufficient glory and attraction so as to render them popular, and if you will then agree to give me, the State, five per centum upon the gross amounts of receipts for admission on race days to race tracks and race grounds which you shall so establish---if you will allow to the State this pittance out of the vast sums which you shall reap from the guilty whom you have made guilty

and whose money you have secured--- If you will but turn into the treasury of the Empire State this title of the filthy lucre which you shall thus obtain, you shall be permitted to carry on as a lawful avocation the most iniquitous, vile and wretched business that has ever been carried on within the borders of this State."

Yet this is precisely what was done when chapter 479 of the Laws of 1887 was passed.

Can it really be believed that the State itself said to these men:

"Gather yourselves together in associations, under the pretense that horse breeding is your object; erect your race tracks throughout the State, and then use them as you please, for any purpose, however vile; you shall be at liberty to dethrone right, morality, decency, to drag down the youth of this State to the lowest depths of degradation. You shall be licensed to carry on your most nefarious pursuit, not throughout the whole of the year---some few months shall remain sacred to decency and propriety, but from the first of May until the first of October. No part of the State shall be protected from your intrusion, but you shall not pollute the air of any one section for more than thirty days consecutively. Erect your fences, charge admission within your gates, and when you have decoyed your victims and despoiled them, give to the Empire State, which eagerly awaits it, a penny out of every dollar that you shall have filched dishonestly from the young and the weak; those whom you have lured to their ruin and destruction. The State shall be your partner only in gate-money receipts, it is true, the least of your earnings, but for your generous concession in this respect you shall not only pursue your felonious business as a lawful business, but we shall enact laws that shall invest in you a monopoly of that business as against the other rascals who are engaged in pool-selling and book-making outside of your inclosures."

Their vile trade shall remain a felony. Your outrageous traffic shall be lifted into lawfulness. They shall be prosecuted. You shall be protected and encouraged."

Such in brief outline is the contract, the solemn contract that the Empire State, the great, glorious Empire State made in 1887 by the enactment of the Ives Pool law with gamblers of the lowest degree and which it has since maintained. Their nefarious establishments have been erected from Montauk Point to Niagara Falls, and the State treasury has received and distributed

to the country fairs the few miserable sheekles which it has reserved as its share of the plunder. Why, for every dollar it has received it has expended ten dollars to support those who have become inmates of its prisons by reason of the weak policy so pursued. You are all familiar with the terrible temptation of this alluring vice. The passion of gambling is pandered to in this fashion in the most insidious manner. Other forms of like viciousness must be followed by the pursuit of sinister and indirect methods. The fear of discovery the dread of detection are sufficient in themselves to destroy their seductiveness; but the haunts of the book-maker and the pool-seller at the race track present nothing that is repulsive, but everything that is attractive to the seduced. You are all familiar with the picture. It needs no description from me. The race track with its splendid surroundings. The club house with its social attractions. The magnificent animals prostituted to uses which shall enable the pool-seller and book-maker to win his thousands, used not in an honorable sporting sense, but fraudulently and dishonorably. The newspapers herald the great events that are to take place and exhaust their powers to depict magnificently and attractively the racing events as they occur. Exaggerated accounts of great winnings are presented to the readers of every journal and the details of a winning of fifty thousand dollars on Domino or Henry of Navarre within five minutes of the making of a wager are glowingly set forth. Alured by these descriptions, tempted by cheap fares and facility of access, the young man and the young woman entering these enclosures sees gathered those whom he has learned to honor and respect, and is set the example by his employer, the bank president or its cashier, men most honored and respected, all engaged without shame or secrecy in this abominable game of gambling with large hazards. I have seen, as you have seen, young women fifteen or sixteen years of age, with their hands full of green backs, accompanied by horse jockeys and touters, seeking advice of men, contact with whom is pollution and corruption, criticising points of horses, talking pedigrees, rushing about excitedly and wildly, full of the maddened frenzy of gambling in its worst spirit, scattering their money right and left, engaged in a pursuit as hellish and develish as any that can possibly be conceived of. What wonder that they sink into the lowest abyss of degradation! What wonder that their brothers similarly tempted will stop at no action however criminal to se-

cure the means to carry on this tempting but destroying evil!

Long has the existence of this wrong been recognized, but every effort to induce the Legislature to come to the rescue has been futile. Again and again have your representatives been importuned to put an end to it. Again and again under one pretense and another, generally invoking as an excuse their desire to receive these moneys for the encouragement of horse breeding by the distribution of prizes at country fairs, has the wrong been steadily maintained and the danger suffered to become greater and greater. Every year from 1887 to 1894 have these futile efforts been made. The crime continued on the increase. Tens of thousands of young men and women have been hurled to their ruin through the instrumentality of the State that should have protected them, and yet the relief would never come. Now here at this Convention, and in this presence, I implore, that an end shall be put to it forever. We have heard the argument of my faint-hearted brother from St. Lawrence whom I have never known to evince such weakness before, that he fears the passage of this amendment lest those who have concocted and maintained this scheme of iniquity will gather vast funds and annihilate all the work upon which we have been engaged. But their moneys however vast will never withstand the outraged sentiment of the people of the State, if you shall permit it to find expression. The majority of the committee on preamble fully appreciate the great importance of this proposition. They placed it upon your files with favorable report and it should long since been adjudicated upon. But, oh, with what weary travail has it been permitted to come before this Convention. Oh, with what desperation have insidious efforts been made to prevent the topic from being considered! And it is only now, at the last moment, at the expiring hour of the Convention, that we have an opportunity to grasp this monster by the throat and choke it to death, unless the interposition of some technicality of parliamentary procedure, some ingenuity of suggested amendment shall be permitted to intervene. Do not, you are urged, treat this matter radically; limit, it is suggested, the phraseology of your amendment to pool-selling and book-making only, but do not attempt to restrict gambling generally, so that if an amendment shall finally have been here adopted, and if perchance the will of the people shall not be defeated and it shall be enacted into constitutional

law, the tricks of the gambler, supplemented by the aid of able counsel, shall suffice to devise some other scheme of perpetuating the same iniquities in the same way but under other nomenclature. Do not be deceived. Gambling has already been made unlawful. If any one desires to legalize any one branch of gambling by the suggestion of proposed amendments, let us say to him, never! Never! No matter from how high a source the demand may come; no matter how great the influence of the proponent; let us refuse his request; let us pass this amendment so that once enacted into law it may carry out its beneficent purpose and not prove a sham and a deceit. Just as it was reported let us have this amendment. No subterfuge, no change, no alterations. Make no half way work. Sweep the whole brood together, gamblers, pool-sellers, bookmakers, all the racing fraternity, into oblivion forever. Pass this amendment now as it is, unaltered and unchanged. True horse fanciers, the Bonners, the Lorillards, the Belmonts, the Keenes and the rest will thank you for the protection you thus afford their legitimate pursuit. Only the gambler who should be a Pariah and an outcast and not the State's associate will have cause for regret.

Mr. Moore—Mr. President, the eloquent gentleman from New York has said all and more than I can say upon this amendment, and, therefore, Mr. President, I simply want to record myself as being in entire sympathy with his utterances. I believe that the thing for this Convention to do is to meet this righteous measure soberly and pass it by a large majority. (Applause.) I am not frightened, Mr. President, by the spectre of the seven hundred thousand dollars of our gamblers coming up against the moral elements in this State. I am not frightened by any such phantom as that. I believe if there is any bill which is devoid of politics that it is this bill. I ask, Mr. President, that the better sense and the moral principle of this Convention shall come to the rescue of this amendment and pass it by such a majority as no other bill has been passed by.

The President pro tempore—The time for debate upon this amendment has closed.

The President pro tempore put the question on agreeing with the motion of Mr. Choate to recommit, with instructions, and it was determined in the negative.

The President—The secretary will read the proposed constitutional amendment through.

The secretary read the proposed constitutional amendment in the language following:

"The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

"Section ten of article one of the Constitution is hereby amended so as read as follows:

"Section 10. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government or any department thereof; nor shall any divorce be granted, otherwise than by due judicial proceedings, nor shall any lottery, or the sale of lottery tickets, pool-selling, book-making or any other kind of gambling hereafter be authorized or allowed within this State; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section."

The President pro tempore--This proposed constitutional amendment, having had three several readings, the question now is upon its final passage. Those in favor will say aye, those opposed will say no.

The secretary called the roll, and the following result appeared:

Ayes--Messrs. Acker, Ackerly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Brown, E. A.; Brown, E. R.; Burr, Cady, Carter, Cassidy, Church, Clark, G. W.; Clark, H. A.; Cochran, Coleman, Cookinham, Cornwell, Countryman, Crosby, Danforth, Davies, J. C.; Deady, Deterling, Deyo, Dickey, Doty, Durfee, Faber, Foote, Forbes, Francis, Frank, Andrew; Frank, Augustus; Fraser, Fuller, O. A.; Galinger, Gilbert, Goeller, Green, A. H.; Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Hottenroth, Jacobs, Johnson, I. Sam; Johnson, J.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lewis, M. E.; Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McDonough, McIntyre, McKinstry, McMillan, Mereness, Moore, Morton, Nichols, W. H.; Nicoll, De L.; Nostrand, O'Brien, Ohmeis, Osborn, Parker, Parkhurst, Parmenter, Pashley, Peck, Phipps, Platzek, Pool, Porter, Powell, Putnam, Roche, Root, Schumaker, Spencer, Springweiler, Steele, A. B.; Steele, W. H.; Storm, Sullivan, W.; Tekulsky, Tibbetts, Titus, Turner, Vedder, Veeder, Vogt, Wellington, Woodward, President---109.

Noes---Messrs. Abbott, Bigelow, Dean, Peabody---4.

The President pro tempore--This proposed constitutional amendment having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

The next order of third reading is No. 33, general order No. 73.

Mr. I. S. Johnson--Mr. President, I move that we do now adjourn.

The President pro tem--The secretary will read the title.

The secretary read the title of the proposed amendment, in the language following:

"Proposed constitutional amendment to amend article eleven of the Constitution, relating to the militia."

The President pro tem--One hour is allowed for the discussion of this proposed amendment.

Mr. I. S. Johnson--Mr. President, is a motion to adjourn in order at any time?

The President pro tem put the question on the motion of Mr. Johnson to adjourn, and it was determined in the negative.

Mr. I. S. Johnson--I rise to a point of order, Mr. President, that this proposed amendment has not been printed.

The President pro tem--The point of order is not well taken, since it has been printed, and is now on the President's desk. No amendments have been submitted.

Mr. Cochran--I do not think, Mr. President, that any one desires to debate this.

The President pro tem--If no member desires to debate this proposed amendment, the secretary will read the amendment through the third time.

"Article 11 of the Constitution is hereby amended by striking out all of this article, and inserting in lieu thereof the following:

"Sec. 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now or may be hereafter created by the laws of the United States, or by the Legislature of this State.

"Sec. 2. The Legislature may provide for enlistment into the active force of all such other persons as may make application to be so enlisted.

"Sec. 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the Legislature may deem proper, provided, however, that there shall be maintained, at all times, a force of not less than 10,000 enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it

shall be the duty of the Legislature, at each session, to make sufficient appropriations for the maintenance thereof.

"Sec. 4. The Governor shall appoint the chief of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate and, with the consent of the Senate, appoint, all major-generals.

"Sec. 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem best conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment, unless two-thirds of the members present in each house shall concur therein.

"Section 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more."

The President pro tem—This proposed constitutional amendment, having had three several readings, the question is now upon its final passage. Those in favor will say aye; those opposed will say no.

The secretary called the roll, and the following result appeared:

Ayes—Messrs. Abbott, Acker, Ack-erly, Arnold, Baker, Banks, Barhite, Barnum, Barrow, Becker, Bigelow, Blake, Bowers, Brown, E. A.; Brown, E. R.; Burr, Bush, Cady, Carter, Church, Clark, G. W.; Clark, H. A.; Cochran, Cookingham, Cornwell, Crosby, Danforth, Davenport, Davies, J. C.; Deady, Dean, Deyo, Dickey, Durfee, Emmet, Faber, Foote, Forbes, Francis, Frank, Andrew, Frank, Augustus; Fraser, Fuller, O. A.; Galinger, Gilbert, Goeller, Green, A. H.; Green, J. I.; Hamlin, Hawley, Hecker, Hedges, Hill, Hotchkiss, Hottenroth, Jacobs, Johnson, I. Sam; Johnson, J.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lewis, M. E.; Lincoln, Lyon, Manley, Mantanye, Marshall, Maybee, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Mereness, Moore, Mor-

ton, Mulqueen, Nichols, W. H.; Nicoll, De L.; Nostrand, O'Brien, Osborn, Parker, Parmenter, Pashley, Peabody, Peck, Phipps, Platzek, Pool, Putnam, Root, Schumaker, Spencer, Steele, W. H.; Storm, Tekulsky, Vedder, Veeder, Vogt, Woodward, President—101.

Noes—Messrs. Coleman, McDonough, Springweiller—3.

The President pro tem—This proposed constitutional amendment, having received the votes of a majority of all the delegates elected to this Convention, is duly passed.

Mr. Lyon—Mr. President, I beg to submit the following report.

The secretary read: Mr. Lyon, from the committee on contingent expenses, reports as follows:

"The committee on contingent expenses, to which was referred the annexed resolution, providing for the payment to Joseph Fayel of the sum of six dollars per day during the sessions, on account of services performed by him in the document room,

"Would respectfully report:

"That said Joseph Fayel was appointed a messenger of the Convention, and as such became entitled to three dollars per day for his services, and that he was thereafter assigned to assist in the work of the document room, in accordance with the provisions of rule 72, authorizing the President of the Convention to detail messengers to render such assistance as might be necessary.

"The committee on contingent expenses is of the opinion that the Convention has not the power to allow the additional compensation asked for, and reports adversely upon such application."

(Signed) GEORGE H. LYON,
Chairman.

The President pro tem—What is the pleasure of the Convention with regard to this report.

On motion of Mr. Veeder, the report was laid upon the table.

Mr. Cady—Mr. President, I move that the Convention do now adjourn.

Mr. Veeder—Mr. President, there is very important business to be performed yet. I ask the privilege of going into committee of the whole on amendment 56. It will not take but a few minutes.

Mr. Cady—I do not withdraw my motion.

Mr. Veeder—The gentleman is a very unkind man; most unkind.

The President pro tem put the question on agreeing with the motion to adjourn, and it was determined in the affirmative.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 137.

Saturday Morning, Sept. 22, 1894.

The Constitutional Convention of the State of New York met in the Assembly Chamber, at the Capitol, at Albany, N. Y., Saturday Morning, Sept. 22, 1894.

President Choate called the Convention to order at ten o'clock.

The Rev. A. Kennedy Duff offered prayer.

Mr. Deady—Mr. President, I move that the call of the roll be dispensed with.

The President—That is not quite in order until a motion is put to dispense with the reading of the Journal of yesterday.

The President put the question on the motion of Mr. Acker to dispense with the reading of the Journal of yesterday, and it was determined in the affirmative.

The President—The roll will not be called.

The Chair has a matter to bring to the attention of the Convention, which, in his judgment, requires its immediate action, and is in regard to the status and pay of the employes of the Convention from the fifteenth day of the present month. The act is silent about their pay after the fifteenth, although I know of no principle upon which they can be retained in the service of the Convention and not paid. They have all been retained up to the present time, and, according to my judgment they should be paid as heretofore. I did not feel exactly that it is my duty to certify without the authority of the Convention, which I ask this morning.

Now, in regard to the continuance of service, it is quite evident that after to-day's meeting, as we shall have only two or three days hereafter to make final settlement of this Constitution, we shall need all the secretary's force. There is no doubt about that. I do not see why the pages and the messengers, and the sergeants-at-arms, and janitors, will not be required. But there seems to be no further occasion for the services of the librarian and assistant librarian and the committee clerks, and possibly the doorkeepers. At any rate, I wish for authority and direction in the matter, and these employes are well entitled that it should be given.

Mr. Acker—Mr. President, I offer the following resolution.

The President—Mr. Acker offers a resolution. The secretary will read it.

The secretary read Mr. Acker's resolution as follows:

Resolved, That all the employes of the Convention and of the secretary be paid to and including to-day; the services of the librarian and assistant librarian, of the committee clerks and doorkeepers be dispensed with after to-day, and all the other employes be retained and paid until the final adjournment of the Convention, and that the President be and is hereby authorized to certify for employes to be paid as herein prescribed.

Mr. Schumaker—The doorkeepers are needed. I shall ask to amend that. What will we do here without doorkeepers? The doorkeepers ought to be kept. I move as an amendment that the doorkeepers be added, and the postmaster.

The President—You move to strike out the doorkeepers and the postmaster from Mr. Acker's resolution. The postmaster will remain, of course. I understood Mr. Acker's motion was to dispense with the services of the librarian and assistant librarian, and the committee clerks and doorkeepers.

Mr. McMillan—Mr. President, I move to lay this resolution on the table.

The President—Before the motion is put, will you allow the Chair to state that, in justice to these employes, the matter ought to be determined, and the President ought to be authorized or not.

Mr. Schumaker—The President makes himself liable.

Mr. Deady—Withdraw your motion, Mr. McMillan.

Mr. McMillan—Then I move to amend this resolution. I withdraw my motion to lie on the table, and I move to amend by striking out all that portion of the resolution which provides for the dispensing with the services of any of the attaches of this Convention. I cannot understand why we should begin to divide pennies. I think the pay of all the employes should go on to the completion of the work of this Convention. If you wanted to discharge the committee clerks, why didn't you do it on the day the committees made their reports? I cannot see any necessity for any picayune policy in respect to this matter.

Mr. Schumaker—Mr. President, I withdraw my amendment. I supposed the matter had been caucused on.

Mr. Gilbert—Mr. President, I was going to say that this resolution ought not to be laid on the table. But I am in favor of the amendment that has been made by the gentleman from Erie. I think the employes should be retained and paid up to the time of the final adjournment of this Convention. I hope the amendment will be adopted.

Mr. Vedder—Mr. President, I sincerely hope that the amendment of the gentleman from Erie will prevail. It is absolutely right, and any other course would be wrong. These gentlemen who have been employed should remain here as long as we do. I do not believe in this cheese-paring business at all. They should remain here until the business of the Convention is concluded.

The President—The question is on Mr. McMillan's amendment, the effect of which is to continue all employes

under pay down to the final adjournment of the Convention, and authorize the President to certify to their pay accordingly.

The amendment prevailed.

The President—The secretary will read the resolution as amended.

The secretary read the resolution as amended, as follows:

"Resolved, That all the employes of the Convention and of the secretary be retained and paid until the final adjournment of the Convention, and the President be, and is hereby, authorized to certify to the employes' pay, as herein prescribed."

The President put the question on the resolution as amended, and it was determined in the affirmative.

Mr. Vedder—Mr. President, I move that when this Convention adjourn, it adjourn to meet again on Thursday next at eight o'clock in the evening.

Mr. Bowers—Mr. President, I move to amend by making it Friday morning at ten o'clock. Coming here on Thursday will be manifestly much more inconvenient than coming here on Friday. There is probably but a day or two more of work to be done. But it is manifestly apparent to me that it is an utter waste of time to discuss these motions this morning. Mr. Acker makes one motion and Mr. McMillan and Mr. Vedder oppose it. Now, Mr. Vedder makes a motion and probably some one else of the majority side will oppose it. Of course, later when they meet in caucus they will come in here with a unanimous front and reconsider any resolution we adopt. But as we, of the minority, would like to have some certainty as to our future movements, I certainly hope that until some resolution is acted upon, and acted upon for good, that there will be no attempt to fix a day that will be broken hereafter. But if we are to dispose of it seriously, and if we are to expect that the majority will adhere to any resolution they will adopt this morning, then, undoubtedly, we will come here and act upon the revised Constitution. I do not know when that will be completed. Unless it is put in better form than the last attempt, I do not know when it will be disposed of.

The President—That is, perhaps, because Mr. Bowers was not there.

Mr. Bowers—Let us have until Friday, and come here Friday and end the work and get ready to go to the

people, but do not let us come here on Thursday and have Thursday and Friday on our hands, and possibly not have the work ready.

Mr. A. H. Green—Mr. President, it has been for a day or two generally understood that this Convention would adjourn on Thursday, and I think that any alteration of the day would occasion many of us inconvenience. I have a further suggestion to make, that if the hour were fixed for half past eleven on Thursday (it is probable that the Convention will not be in session over a few hours), that would be a convenience to half the Convention. There is no train that comes here and we would have to make arrangements to come the night before. If it could be fixed at half past eleven on Thursday, we people from the southern part of the State could leave our homes in the morning and arrive here by that hour.

Mr. Vedder—Mr. President, I believe it is the intention of the whole Convention to close its work up as soon as practicable, and to adjourn in decency and order. The revision committee, to which committee is committed now the principal work of the Convention, is getting our work in proper legitimate shape, so that they possibly can be ready to report on Friday morning, possibly Thursday evening. Now, if we meet here Thursday evening, there may be some little work that can be done that evening as a preliminary to adjourning on Friday sine die. Therefore, in order if business should come before us, or should remain to be done which is undone, we could do it Thursday evening and be ready on Friday to adjourn by having the whole day at our disposal. It is for the economy of time that I have suggested Thursday evening. It will inconvenience no one unless it is the majority side of this Convention. The party which will be headed, which is headed and led here substantially by the gentleman from New York, Mr. Bowers, will be returning in the funeral procession from Saratoga, of the Democracy of the State, and they will want to come here in this retreat on that evening.

Mr. Bowers—(Sotto voice)—We won't look as much like a funeral procession as you did when you came here on Thursday last.

Mr. Vedder—So it won't be so much of an inconvenience to the Democracy.

But I have made this in the matter of economy of time, to come here on Thursday evening so we could finish up anything that remains to be done, and we can adjourn here on Friday sine die.

Mr. Bowers—Will the gentleman permit a question?

Mr. Vedder—Yes.

Mr. Bowers—If Thursday evening at eight o'clock is fixed as the time to adjourn, will it remain so?

Mr. Vedder—There is no doubt about the fact. When the Republicans fix upon a policy they follow it without diverging from it. (Laughter.)

The President put the question on the amendment of Mr. Bowers, that the Convention adjourn until Friday morning at ten o'clock, and it was determined in the negative.

Mr. A. H. Green—Mr. President, I would like to have it Thursday at half past eleven o'clock a. m.

The President put the question on the amendment of Mr. Green, and it was determined in the negative.

The President put the question on the motion of Mr. Vedder, that when the Convention adjourn, it meet again on next Thursday evening at eight o'clock, and it was determined in the affirmative.

Mr. J. Johnson—Mr. President, on Wednesday of last week a motion was made to reconsider the vote by which third reading No. 1 was passed, usually called the amendment in reference to the coroners. The motion was laid on the table.

The President—Thursday of last week?

Mr. J. Johnson—Wednesday of last week. I move you, sir, that that motion be taken from the table. It is necessary to amend that section in order to make it harmonize with the cities article.

Mr. Vedder—Mr. President, may we have that motion read by the secretary.

The President—I think it is the right of the Convention to have it read before that motion is taken from the table. The secretary will read it.

The secretary read Mr. Johnson's motion as follows:

"Mr. J. Johnson moved to reconsider the vote by which general order No. 9, printed No. 339, entitled "Proposed constitutional amendment to amend article 10 of the Constitution to do

away with the office of coroner as a constitutional office," was passed, and that that motion lie on the table. Determined in the affirmative."

The President—The question is on Mr. Johnson's motion to take from the table.

Mr. Bowers—Is that motion debatable?

The President—I think it is.

Mr. Bowers—I would suggest to Mr. Johnson and members of the Convention, that it would be a very good thing if we could be told what would be the object of taking it from the table? Is it to correct a typographical error in the amendment that passed the Convention? Is it to change the form of the amendment? Why should it be reconsidered? Why go through the trouble of a roll call to reconsider an amendment that has been adopted, merely because Mr. Johnson suggests it. Why doesn't he give us some reasons and explain the object of taking it from the table, that the Convention may know what it is to do and what it is about? It seems to me that without any explanation the proper course of the Convention should be to defeat the resolution to take from the table.

Mr. Mulqueen—Mr. President, I hope on this last day of this Convention this great body of men will not turn itself into a legislative Assembly and propose one motion for the sake of getting in another. I believe that the proposition to take this matter from the table is a trick, and it is the purpose of Mr. Johnson to propose something entirely new, and to add it on as a joker and thus carry it through this Convention. It has been said here that Mr. Johnson has had Mr. Sullivan, from Buffalo, running around the house this morning asking "How many Republicans are here?" "Are they ready to vote upon this question?" They must, by this trick, this subterfuge, reconsider this amendment. Oh, is that the conduct of these men after the resolution that has been passed upon here that we were to only consider two questions. I moved yesterday that the session be extended from five o'clock until six o'clock so that we might have a full and fair discussion upon these two amendments, and now to-day, in the last hours of the session we are to be cheated by a motion of this kind to reconsider a vote we had taken upon the abolition of the

office of coroner, and then to bring in a rider upon it. I hope the manliness, if there be any left on the Republican side of this question, will protest against the action of this old man who is fond of his bill; this old man who is in love with his bill, this old man who dreams of his bill—

The President—The Chair would suggest that any comments upon the age of a member is out of order.

Mr. Mulqueen—Mr. President, I will take back the age. But I am informed by friends that the cities article has been his pride by day and has occupied his time at night. Morning, noon and night he has dreamed of his cities article. He cares nothing about the way he secures the fruition of his hopes. He would send us out to the people of the State saying that in the last hours of the Convention he resorted to a trick in order to pass his much-abused and much-laughed-at cities article. I hope, Mr. President, that this motion will be voted down.

Mr. J. Johnson—Mr. President, this motion was made because there is a three years term for the county officers of New York and Kings, which is in conflict with the provisions for the separation of elections. Now, sir, whether there will be any other amendment made or not, I do not know, and I speak it with absolute candor. That certainly must be done, or else there is a conflict between that amendment and the other amendment as to the separation of elections, one making it in even numbered years for every term, and the other a three years' term.

Mr. A. H. Green—Mr. President, if this motion is reconsidered, I think it would be very desirable to make a further amendment to that article, not touching at all the question of separating the two elections, but as to the mayor of the city of New York next to be elected. No man can tell whether we are going to vote for a three years' term or a two years' term. It undoubtedly may have been, and I will concede that it was, an erroneous arrangement of verbiage, but it ought to be adjusted so that we will know what we are going to do in New York. I do not refer to the second article on cities, which ought to be reconsidered altogether, but the article which Mr. Johnson speaks of, so that the term of the mayor can be

defined, instead of acting under an uncertainty.

Mr. Cochran—Mr. President, I desire to make this point of order. As I understand the resolution which was reconsidered yesterday, and finally adopted as amended, we were not to take up any further amendments to the Constitution after those two which have been recommended in that resolution. Now, if this motion to reconsider prevails, then a motion will be made to amend this constitutional amendment, and then we will have an hour to debate this entire constitutional amendment. We will also have another roll call, and we will be reconsidering the entire constitutional amendment and voting upon it, just as if it was a new amendment.

The President—The Chair does not consider that there is anything in that order of yesterday that prevents the reconsideration of matters that have passed on third reading. I do not think it would be out of order under that resolution to reconsider any action taken yesterday. Now, Mr. Johnson makes this motion after this amendment has passed to third reading. The motion was laid upon the table, and the question now is whether it shall be taken from the table.

Does any other gentleman desire to be heard upon Mr. Johnson's motion?

Mr. Hotchkiss—Mr. President, I think that I understood Mr. Johnson, but in order that there may be no mistake, I would like to ask him the question whether it is his intention, or whether he knows of an intention, upon the part of any other person to move an amendment to this coroners' article which will pertain to or affect any other office than that of coroner?

Mr. J. Johnson—Mr. President, I have a resolution here, the effect of which, after the formal part, is to strike out all of line 3 after the word "counties," and all of line 4 before and including the word "New York," and inserting after the word "happen," in line 6, page 1, the words "except in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen once in every two or four years, as the Legislature shall direct," and that is the only amendment that I propose to offer, and the only amendment which I believe will be offered.

Mr. Hotchkiss—The gentleman does not answer my question completely. I accept his statement so far as it per-

tains to himself. I asked him if he knew of an intention upon the part of any other person to offer an amendment which will affect any other office except the office of coroner.

Mr. J. Johnson—I think I have given all the statement that is necessary.

Mr. Bowers—Mr. President, then, in other words, there is no responsible man on the part of the majority, including the gentleman who makes this motion, who will tell us whether or not the real intent of moving to reconsider this coroner's amendment is to make the change proposed, or whether it is intended to offer some other. It seems to me that we are entitled before we are called upon to vote upon a question, to be told what is to be done. There has been no disposition on the part of the minority to do anything other than to facilitate business. If there was a necessary change to be made in any proposed constitutional amendment that had been passed, it is reasonable to suppose that the minority would assist. It seems to me, that we are entitled to know whether we are to be launched into a new debate upon new questions, or upon questions once killed, and when Mr. Johnson, who moves this resolution, and his associates, do not choose to deny in advance what we apprehend, it seems to me, that we cannot be expected to join in the motion to reconsider, and that we will be justified in voting against it. We shall characterize it as a trick, if anything is done other than as Mr. Johnson has stated.

Mr. J. Johnson—Do not characterize it until it is done.

Mr. Bowers—I did not; I said I should.

Mr. Nelson Smith—Mr. President, we all know that we are bound up here by a set of rules, which, if observed, would require the article to be reconsidered. But we are not, in that respect, so bound up but that if a clerical error was discovered in any bill it might not be corrected. We could correct it by unanimous consent.

Mr. J. Johnson—If you get unanimous consent. I will withdraw my motion.

Mr. Smith—That is it, exactly. I was trying to reach that. Suppose a figure was wrong, or a date wrong, it could be corrected by unanimous consent, and the subject need not be open to other amendments. Now, as I understand the motion or purpose of the honorable chairman of the cities com-

mittee, it is simply to correct what might be regarded as a clerical error, and should be done by unanimous consent, without referring it back or opening the subject at all, and I suggest that course be taken.

Mr. J. Johnson—Mr. President, if that can be done, I will fully agree that it be done in that way.

Mr. Veeder—Mr. President, I sincerely hope that this Convention will not stultify itself and set this example for future Legislatures. The way they can beat the devil around the stump, according to your proposition, general order No. 1, is amazing, when you have declared that on the last reading of a bill no amendment shall be allowed, and the question on its final passage shall be taken. Now, you are demonstrating to future Legislatures of the State how you can get around this other elegant proposition of this virtuous Convention, and I submit, after all our attempts to try and compel the Legislature to let the people know, in advance, what they propose to enact, we are demonstrating to them that we cannot do it ourselves. That we intend to do one thing to-day and surreptitiously, and without the knowledge of the delegates, do something else to-morrow.

Mr. McMillan—Mr. President, I desire to say that I understood Mr. Johnson to state that he was willing to so amend this resolution that this matter be reconsidered for the purpose of this amendment, and for this purpose only.

Mr. J. Johnson—I will do that; but I cannot do that until it is taken from the table.

Mr. McMillan—He can make his motion so it will be taken from the table for that purpose only.

Mr. J. Johnson—I move that the resolution to reconsider third reading No. 1 be taken from the table for the purpose of reconsidering, and offer the following resolution as an amendment.

Mr. Cochran—And that only?

Mr. Veeder—Is there anything else, or are you going to offer another amendment?

Mr. J. Johnson—And that only.

Mr. Veeder—Try and be honest with us once.

Mr. J. Johnson—Mr. President, I desire my friends on the other side to reserve their invectives and adjective and anathemas until something is done. I do not desire, nor do I propose to

stand here and have characterized in advance that which is not done. I think I am just as honest as the gentlemen who make the allusion, and I insist that adjectives and hints and innuendoes of that kind are unworthy of this Convention. (Applause.)

Mr. Bowers—Mr. President, it seems to me, in view of the declaration of the gentleman from Brooklyn, Mr. Johnson, that he ought to receive from this Convention a certificate of character that he is doing all he represents.

Mr. J. Johnson—Mr. President, it seems to me, in view of the remarks of the gentleman, they are altogether out of order and beneath the dignity of a deliberate Convention.

Mr. Alvord—Mr. President, I desire to say that I have listened to this debate somewhat at length, not endeavoring to put in a parliamentary objection to it. I ask the Chair to reflect a single moment. I make the point of order that this matter is not debatable. A motion to lie on the table is not debatable, and the motion to take from the table is not debatable until after the matter has been taken from the table.

The President—The point of order is well taken. The question is on the motion of Mr. Johnson to take from the table.

Mr. Veeder—Why not have the motion read?

Mr. Morton—Mr. President—

The President—The secretary will read.

Mr. Morton—Mr. President—

The President—What does the gentleman desire?

Mr. Morton—I desire to be heard.

The President—You are a little late.

Mr. Morton—Very well, sir, if I am not in order.

The President—You are not in order to debate a motion to take from the table.

Mr. Morton—What has all this debate been about then?

Mr. Mulqueen—Mr. President, I desire to ask if Mr. Johnson has not included in his motion that the purpose of the motion to reconsider is to amend in the respect that he has indicated, and for that purpose only?

The President—The question is on the motion to take from the table.

The motion prevailed.

The President—The question now is on the motion to reconsider the vote

by which the coroners' amendment was adopted.

Mr. McClure—Mr. President, I understand that this motion has now taken the shape of Mr. Johnson's consent, that he only moves to reconsider it for the purpose of making the amendment indicated by him, and that only.

Mr. J. Johnson—That is the shape, so far as I know how to put it or state it in parliamentary form.

Mr. McClure—I think that should be stated by the Chair.

Mr. Morton—Mr. President, after what has transpired here on this floor with reference to this subject, I wish to stand here, as a delegate in this Convention, and to disclaim for myself being committed by Mr. Johnson or by anybody else in this Convention against my rights and privileges as a delegate here. Now, sir, I know nothing about this movement, but I do protest in the name of independence and of right, against this minority upon this floor standing up here one after another and undertaking to reflect upon the motives, the rights, and the privileges of the delegates to this Convention, and to deliberately, here in the face of this body, make a contract with Mr. Johnson or anybody else here, whereby any other delegate would be deprived of his privileges in this matter. I want you to understand that if I see fit to offer an amendment when it is reconsidered, that I will not permit Mr. Johnson or any other delegate on this floor to preclude me from that privilege. I consider it an insult, sir, to the dignity of the Convention, and an insult to the rights of the individual members here, and an insult to the majority of this Convention to have such a scene transpire here as has been going on this morning. These considerations with which Mr. Johnson has been treated by the minority is one thing, and the rights and the privileges of the individual members are another, and I for one, after the indignities that have been heaped upon Mr. Johnson, the chairman of the cities committee, will not consider myself bound by any understanding had in reference to this matter, and I wish to state to the minority in this Convention that they were very fortunate in having a man of the temperament of Mr. Johnson, as the chairman of the cities committee. If some

other gentlemen were chairman of that committee, they would have had their hides hung on a fence where they ought to have been long ago. (Applause and laughter.)

The President put the question on the motion of Mr. Johnson, to reconsider the vote by which the coroners' amendment was passed.

Mr. Bowers—Mr. President, I rise to a point of order. It was ruled in the Chair last night that you could not reconsider the passage of a constitutional amendment except by calling the ayes and noes. I do not say that that ruling was right, but we want to get a contrary ruling this morning. I want to make the point of order so that we can get the ruling of the President as against the Vice-President.

The President—Before Mr. Bowers had made his point of order the secretary had called the attention of the Chair to the fact that the ayes and noes were necessary on the reconsidering of an amendment. Now, those in favor of reconsidering the vote by which this amendment was carried, as their names are called, will say aye, and those opposed, no. The secretary will call.

Mr. Bowers—I do not wish to be misunderstood. I cannot see why, without objection, you should be forced to go on and call the ayes and noes. I call your attention to it because it was so ruled yesterday by the vice-president.

The President—It seems to be the rule that, upon reconsidering the vote by which an amendment is finally passed, it can only be done in the same way that it was passed. The secretary will call the roll on reconsidering the vote by which this amendment was finally passed.

The secretary proceeded to call the roll.

Mr. Holcomb—Mr. President, I would like to explain my vote. I am quite unable to see why there should be any reconsideration of this proposition. I do not understand the remarks of the chairman of the committee on cities to be entitled to any great weight—

Mr. Hawley—I rise to a point of order. The gentlemen are not permitted to explain their votes.

The President—I think that rule was passed,

Mr. Holcomb—Oh, I beg your pardon. I did not know that. I vote no.

Mr. Veeder—Do I understand the Chair to say that we cannot explain our votes?

The President—So the Chair understands.

Mr. Veeder—Then I vote no.

The motion to reconsider prevailed by the following vote:

Ayes—Messrs. Abbott, Acker, Ackery, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Bigelow, Bowers, Brown, E. A.; Cady, Chipp, Jr.; Clark, G. W.; Clark, H. A.; Cochran, Cookinham, Cornwell, Crosby, Danforth, Davies, J. C.; Dickey, Durfee, Emmet, Faber, Foote, Forbes, Francis, Frank, Augustus; Fraser, Fuller, C. A.; Fuller, O. A.; Galinger, Goodelle, Green, A. H.; Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, M. H.; Holls, Hotchkiss, Jacobs, Johnson, I. Sam; Johnson, J.; Kellogg, Kinkel, Lauterbach, Lester, Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McKistry, McLaughlin, C. B.; McMillan, Moore, Morton, Nostrand, O'Brien, Osborn, Parker, Parkhurst, Parmenter, Peck, Phipps, Platzek, Pool, Porter, Powell, Pratt, Putnam, Redman, Roche, Sandford, Spencer, Springweiller, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Sullivan, W.; Tekulsky, Tibbetts, Titus, Vedder, Vogt, Wellington, Whitmyer, Woodward, President—92.

Noes—Messrs. Blake, Burr, Davenport, Deady, Deyo, Durnin, Giegerich, Goeller, Green, J. I.; Griswold, Holcomb, Hottenroth, Mulqueen, Peabody, Rogers, Schumaker, Tucker, Veeder—18.

The President—This venerable amendment No. 1, standing at the head of the calendar, is now on the order of third reading, and is open for amendment.

Mr. J. Johnson—Mr. President, I move my resolution in the hands of the secretary.

The President—The secretary will read Mr. Johnson's motion to recommit with instructions to amend.

The secretary read the motion as follows:

"Mr. Johnson moves that this proposed amendment be recommitted to the committee on county, town and village officers, with instructions to forthwith report an amendment striking out all of line three after the word 'counties,' and all of line four before and including the word 'New York,'

and insert after the word 'happen' the words 'except in the counties of New York and Kings, and in all counties whose boundaries are the same as that of a city where such officers shall be chosen once in every two or four years as the Legislature shall direct.'"

The President—Are the gentlemen ready for the question on that amendment?

Mr. Cochran—Mr. President, I call the attention of the chairman of the committee on cities to an inconsistency. As I understand this amendment as he proposes, it would allow the Legislature to fix the term of sheriff at either two or four years.

Mr. J. Johnson—That is it exactly.

Mr. Cochran—There is further down in this paragraph a provision that provides that the sheriff shall be ineligible for the next three years. I suggest that it be made to read ineligible for the next term. As it is now, if the Legislature makes the term for two years and he is ineligible for the next three years, it would come in the middle of the term of the next sheriff.

Mr. Johnson—I accept that amendment.

The President—If any gentlemen have any other amendments to this section they can offer them at this time.

Mr. Johnson—Mr. President, I understand the amendment of the gentleman from Brooklyn is to substitute for "three years" the word "term." It seems to me that it is entirely consistent, and I see no objection to it.

The President—Mr. Cochran will hand in his amendment in writing.

Mr. Hotchkiss—Mr. President, there is considerable doubt about the propriety of Mr. Cochran's amendment, because his amendment would apply universally throughout the State; whereas it is the intention of the amendment to be applicable only to the counties of New York and Kings and to all counties whose boundaries are the same as cities.

This thing has to be formulated carefully, and not jumped through on mere inspiration.

Mr. J. Johnson—I would like to add to my resolution this: Strike out the words "three years" on line 7 and insert instead thereof the word "term;" the effect of that amendment will be this: That if the sheriff of New York is elected for two years he will be then

ineligible until another sheriff has been elected and served his term, which is the effect of the present amendment.

Mr. Cochran—That is my amendment.

Mr. Johnson—Yes, I was merely putting it in my amendment.

The President—If the gentlemen will give attention it will be read again so that it will be understood.

The secretary read the proposed constitutional amendment as amended by Mr. Johnson, as follows:

"Sheriffs, clerks of counties and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen once in every two or four years, as the Legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their office. They may be required by law to renew their security from time to time, and in default of giving such new security, their office shall be deemed vacant, but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity of being heard in his defense."

Mr. Veeder—Mr. President, I rise to an inquiry. This proposition as it is now amended, allowing the Legislature to fix the term of these officers in the county of Kings and in the county of New York and other counties whose territory is all embraced in a city, will leave their tenure of office at the mercy of the Legislature. They can change it back and forth from two to four years. One Legislature may make it a four years' term, and the next Legislature may change it back to a two years' term. It seems to me to be a very serious thing.

Mr. H. A. Clark—Mr. President, I notice by the amendment as now proposed by Mr. Johnson, that he leaves out the office of register of deeds of the city and county of New York. I cannot understand why that office should not be left in as it was in the first amendment, and as it is in the

present Constitution. In drawing the amendment that he proposes here, he includes sheriffs, county clerks and district attorneys, but leaves out the register of deeds. Now, the term of the register of deeds, as I understand it, is three years. It will be another inconsistency if he don't keep it in and provide for the change to two or four years, as he does the other officers. I would like to have the gentleman explain why that change was made.

The President—It should be made right.

Mr. J. Johnson—There are no registers of deeds, so far as I know, except in those counties where their boundaries are the same as those of the cities.

Mr. Hotchkiss—Westchester county has a register.

Mr. J. Johnson—I was not aware that there were registers of deeds in other counties. If the clerk will let me take that a moment I think I can rectify it.

Mr. Storm—While we are waiting, Mr. Floyd is detained at home on official business, and desires to be excused for to-day.

Mr. Veeder—Would it be in order, Mr. President, to move that this matter lay over until we meet again and then we can fix it up.

The President—It might interfere with the business of the revision committee in the final printing.

Mr. J. Johnson—Mr. President, I would ask that the word "registers" be retained after the word "counties."

Mr. Veeder—What becomes of the register of the county of Kings?

Mr. Johnson—That leaves it as it was.

Mr. Veeder—That does not take that office in. I should like to know what becomes of the register of the county of Kings.

Mr. President—I move that we suspend this order of business, and go into committee of the whole on Mr. Woodworth's amendment to amend the bill of rights.

Mr. J. Johnson—By inserting the word "registers," in line three, after the word "counties," the matter is entirely covered. Therefore, I would add to the amendment by inserting the word "registers" after the word "counties," so that it will then read: "Sheriffs, clerks of counties, registers (I think the official name is registers; if gentlemen have any other informa-

tion, I am willing to call it registers of deeds) and district attorneys."

Mr. Mulqueen—Mr. President, are we going to vote upon an amendment containing terms that we are not sure of? The gentleman says: "I think the terms are so and so." The gentleman does not know himself.

Mr. J. Johnson—Mr. President, I use the same word that is now in the Constitution.

Mr. Mulqueen—He really doesn't know what he wants himself.

Mr. Bowers—Mr. President, would it be in order to suggest, for the purpose of facilitating the orderly progress of this Convention, that Mr. Johnson take it to one of three committees to correct? First, the cities committee; second, the committee of the whole, and third, the more important committee, because we would know when we got through with it, the caucus committee. (Laughter.)

Mr. Hawley—Mr. President, I move to amend that the resolution be referred to the concentrated wisdom and volubility of the Convention, the gentleman who has just taken his seat. (Renewed laughter.)

Mr. Bowers—We will take that, if you give it to us.

Mr. Nicoll—Mr. President, is a general debate on the cities article now in order?

The President—A general debate upon this venerable amendment about the deceased coroners is in order.

Mr. Bowers—What are we on?

The President—We are in that order prescribed by the rule which allows one hour for debate.

Mr. Bowers—I thought after the debate ceased we would take a vote?

The President—We are now to have the pleasure of listening to Mr. Nicoll of New York.

Mr. Cookinham—Mr. President, may I ask the gentleman a question?

The President—Will Mr. Nicoll permit Mr. Cookinham to ask him a modest question?

Mr. Nicoll—Of course.

Mr. Cookinham—I would like to ask the gentleman if he has sold the farm which he moved up on to yesterday?

Mr. Nicoll—I have had several offers to trade, but I have not come to a conclusion in the matter. It is too early in the morning for me to match jokes with my brother from Utica, but I am disposed to occupy this hiatus in

the proceedings of the Convention by calling their attention to what after all is a very serious matter, as far as the cities article is concerned. In the excitement of the other evening, Mr. A. H. Green—always the careful conservator and guardian of the rights of the cities—noticed this omission and endeavored to attract the attention of the bewildered Convention to it, but some way or other it was overlooked in the rush. The difficulty is this: In the cities article relating to the extension of terms of municipal officers, the provision is so put that the next mayor elected in the city of New York will have a three years' term of office. It is not so intended by the framers of the amendment, but it arises from this reason—

Mr. Hotchkiss—Oh, yes, it was intended in the deliberate passage of the measure.

Mr. Nicoll—Was it intended, Mr. Johnson?

Mr. Johnson—Yes.

Mr. Nicoll—Well, if it was intended, I have nothing more to say. (Laughter.)

Mr. Hotchkiss—Mr. President, for the information of the gentleman from New York, may I say that that was debated in the cities committee and was fully and accurately pointed out to them; that they adopted it notwithstanding, and when the measure came into this house I called the attention of the Convention to it. I discussed its propriety with several of the most prominent members of the majority, and they all seemed to think that it fell quite in line with the anticipated Republican majority of this fall, and in that regard was entirely satisfactory to them.

Mr. Bowers—That was before the Saratoga Convention, was it not?

Mr. J. Johnson—I desire to say that Mr. Hotchkiss has accurately stated it, and that the subsequent events has convinced us that we were right.

Mr. Veeder—Mr. President, I would like to inquire what are we at now?

The President—We are at the same thing. The hour has not yet expired.

Mr. Veeder—But Mr. Johnson flew off on another subject.

Mr. Bowers—Mr. President, I move we adjourn.

The President—It is not in order pending a third reading,

Mr. J. Johnson—I am very sorry that there should have been any error in this amendment. It arose from misinformation as to the office of register that we supposed was purely local, to those two counties that we provided. Now, sir, I desire to amend the resolution in this form so that the first eight lines shall read as follows, and I think it is correct:

"Sheriffs, clerks and registers of counties, and district attorneys, shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings and in all counties whose boundaries are the same as those of a city, where all such officers shall be chosen for two or four years, as the Legislature may provide. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their office. They may be required by"

The effect of it is that the first eight lines are those amended, and with the consent of the gentleman I will change my resolution to this form, which, I believe, is agreeable to every one who has examined the question.

Mr. H. A. Clark—Mr. President, I would like to ask the gentleman why he leaves out the office of county clerk and thereby destroys that as a constitutional office?

Mr. Johnson—It reads "sheriffs, clerks and registers of counties." I do not leave it out.

Mr. Veeder—I think there is one little trouble about that proposed amendment just now. They provide for the election of sheriffs and clerks of counties other than in the counties of New York, Kings and other counties where the city embraces the entire county. The only provision made for those county clerks and sheriffs and registers is the fact that the Legislature shall fix their term of office, but there is nothing said about their election. I do not suppose that makes any difference.

Mr. J. Johnson—I think, Mr. President, that that is entirely answered by the amendment. There is no suggestion necessary.

The President—The question is on the amendment of Mr. Johnson.

Mr. Bowers—Mr. President, may we hear the amendment, if we have got one at last to vote upon?

Mr. Moore—Mr. President, I would like to ask if the amendment has yet been perfected, so that we will know what it is.

The President—The Chair cannot answer, but the secretary will read it in its present form.

The secretary read the proposed constitutional amendment, as follows:

"Sheriffs, clerks and registers of counties and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen once in every two or four years, as the Legislature shall direct. The sheriffs shall hold no other office, and be ineligible for the next term after the termination of their office."—

Mr. Veeder—May I interrupt right there? The expression there is that the sheriffs and registers and county clerks are to be "chosen" in such manner as the Legislature may direct. There is no provision for their election at all.

The President—The secretary will proceed.

The secretary continued, as follows:

"They may be required by law to renew their security from time to time, and in default of giving such new security their offices shall be deemed vacant; but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned, within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity of being heard in his defense."

The President—Is there any more debate? Does anybody else desire to be heard upon this matter before it goes upon third reading. There being no more debate, the secretary will read this bill through the third time.

Mr. Bowers—This amendment, I believe, is satisfactory to Mr. Johnson. He has probably accomplished the purpose he has in mind. It provides for the choosing of officers one way in certain counties, and their election another way in other counties.

Mr. J. Johnson—Mr. President, the word "chosen" is the word used in the Constitution almost invariably instead

of the word "elected." I certainly do not intend to have any double dealing in this business. If there is any possible suggestion that there is in the amendment, I should be glad to rectify it. The word "chosen," is the word used for "elected." If they will make that last phrase, "where such officer shall be chosen," read "elected," if it will be consented to, I have no objection to it.

Mr. Hawley—Mr. President, if the word "elected" is put in, the revision committee will change it to "chosen," because that is the word used in the first section of the Constitution and used all the way through.

Mr. Johnson—Will you change it so as it will read "chosen by the electors?"

Mr. McClure—We would like to have the revision committee inform us whether they will allow the language to stand as Mr. Johnson has changed it?

Mr. Bowers—That will depend upon the caucus.

Mr. McClure—But between the caucus and Mr. Johnson, we are in a dilemma here.

Mr. Bowers—Quite so.

Mr. H. A. Clark—Mr. President, may I ask that the secretary again read that clause so that we may understand it.

The President—The secretary will again read it.

The secretary read the following:

"Sheriffs, clerks and registers of counties and district attorneys shall be chosen by the electors of the respective counties once in every three years, and as often as vacancies shall happen, except in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years, as the Legislature shall direct."

The President—Does any other gentleman desire to be heard upon this amendment before it is read the third time?

Mr. Durfee—I would like to inquire what becomes of the amendment of Mr. Cochran.

Mr. Cochran—That was accepted by Mr. Johnson,

The President—The question is on Mr. Johnson's motion to amend, which must be acted upon before the matter is voted upon the third time.

The President put the question on Mr. Johnson's amendment, and it was determined in the affirmative.

The President—The amendment will now be read a third time before the final vote is taken.

The secretary commenced the reading of the amendment the third time.

Second Vice-President W. H. Steele in the chair.

Mr. Veeder—I rise to a point of order. Has not this matter got to be engrossed and reported by the revision committee before a vote can be taken upon it? Are we going to take the responsibility of voting upon a scrap of paper that is all interlined there.

The President pro tem—The Chair must decide that, according to the custom, this amendment made during this hour does not go to the committee on revision.

Mr. Veeder—Are we to be required to vote upon a scrap of paper that has a lot of mixed up stuff on it.

The President pro tem—The Chair is obliged by the rules we have adopted to rule that we have to pass upon it as it is.

Mr. Veeder—That beats any legislative proceeding that I ever heard of.

The secretary completed the reading of the amendment the third time.

The President pro tem—This proposed constitutional amendment having had three several readings the question is now upon its final passage. Those in favor will say aye and those opposed will say no.

The secretary will call the roll.

Mr. Veeder—Mr. President, would it be in order to lay that matter aside to be engrossed before we vote upon it.

The President pro tem—Not unless we suspend the rule.

Mr. Veeder—Then I move to suspend the rule.

The President pro tem—Under the rule no dilatory motion can be entertained when the call of the roll has been ordered.

Mr. Veeder—Then I move that Mr. Johnson be allowed to hold that paper.

The President pro tem—The secretary will proceed with the call of the roll.

The secretary proceeded to call the roll,

Mr. Kellogg—I desire to explain my vote.

The President pro tem—Not in order.

Mr. Kellogg—I was going to say that I voted against it before, but I am going to vote for it now.

The President pro tem—This proposed constitutional amendment having received the votes of a majority of all the delegates elected to this Convention is duly passed.

The vote in detail is as follows:

Ayes—Messrs. Abbott, Acker, Ackly, Alvord, Arnold, Baker, Banks, Barnum, Barrow, Becker, Brown, E. A.; Brown, E. R.; Cady, Carter, Church, Clark, G. W.; Clark, H. A.; Coleman, Cookinham, Cornwell, Crosby, Davies, J. C.; Dean, Dickey, Durfee, Faber, Francis, Frank, Andrew, Frank, Augustus, Fraser, Fuller, C. A.; Fuller, O. A.; Galingier, Gibney, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, M. H.; Holls, Hotchkiss, Jacobs, Johnson, I. Sam; Johnson, J.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McIntyre, McKinsty, McLaughlin, C. B.; McMillan, Moore, Morton, Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root, Smith, Spencer, Springweiler, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Sullivan, W.; Tekulsky Tibbetts, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President—93.

Noes—Messrs. Blake, Bowers, Burr, Chipp, Jr., Cochran, Danforth, Deyo, Durnin, Emmet, Forbes, Giegerich, Gilleran, Goeller, Green, A. H.; Green, J. I.; Griswold, Holcomb, Hottenroth, Kerwin, Kimmey, Maybee, McClure, Mulqueen, Nicoll, D. L.; Parmenter, Peabody, Peck, Rogers, Sandford, Titus, Tucker, Veeder—32.

Mr. Cookinham—Mr. President, I call from the table a resolution offered by myself on Thursday evening last in regard to the appointment of a committee and ask for its reading.

The President pro tem—The secretary will read the resolution.

The secretary read the resolution as follows:

"Resolved, That a committee consisting of ten delegates be appointed by the president to draft an address to the people of the State explanatory of the proposed constitutional amendments to be submitted to the popular

vote, and that the President be ex officio chairman of such committee.

Mr. Cookinham—Mr. President, I do not suppose that it is necessary to say a word in regard to this resolution. It is the ordinary resolution offered upon such occasions, that an address explanatory of amendments should be issued, and if no one desires to debate it, I ask for a vote upon it.

Mr. Bowers—Mr. President, it seems to me that such a resolution would be eminently proper when the work of the Convention is completed, but it will not have been completed until you have had the report of the committee on revision. Nobody knows but that next week everything will be changed. Nobody knows what will happen. How can you appoint a committee until you know what you are to draft an address on?

The President pro tem—This resolution is that the committee shall be appointed when the work is completed.

Mr. Veeder—Mr. President, may I ask if that committee is to be made up of members of this Convention irrespective of party?

The President pro tem—I suppose so.

Mr. Veeder—And in that address each member may express his views?

The President pro tem—It is the same as any committee appointed by the Convention.

Mr. Veeder—The majority will control?

The President pro tem—The majority will control.

Mr. Veeder—And the Democrats will be in the majority, I suppose?

Mr. Mulqueen—Mr. President, I offer as an amendment that a committee of ten be selected from the Republicans in this Convention.

The President pro tem—Mr. Mulqueen offers an amendment that a committee of ten be selected from the Republicans in this Convention.

Mr. Mulqueen—Mr. President, believing as I do that this Convention intends to rob the people living in the great cities of their rights, it is unfair to ask us, who are so opposed to your Constitution, who will denounce it everywhere as a work, not of a deliberative body, but of a caucus, to act on your committee. Last night you had a caucus on this gambling bill. Thirty men in your caucus opposed it, and yet they come in here and, at the dictates of the caucus, voted in favor of it.

That shows, Mr. President, that the work of this Convention does not represent the deliberative judgment even of the Republicans of this house. It is the work of the caucus, and no Democrat, I hope, will accept a position on a committee to recommend to the people of the State of New York the adoption of this Constitution, which seeks to do so much wrong to the people of this State.

Mr. Abbott—Mr. President, I do not know what authority the gentleman from New York (Mr. Mulqueen) has for making any such assertion as that. I am here as a Republican. I consider myself bound by the action of the Republican caucus, and if bound by such action, I think my vote is a sufficient refutation of his statement. I voted against the amendment he refers to.

Mr. Mulqueen—Will the gentleman permit a question? Did not thirty members in your caucus vote against it, and were they not voted down?

(Cries from the other side of "No," "no.")

Mr. Mulqueen—Did not thirty-one, I mean not thirty? (Cries from the other side, "No," "no.")

Mr. Root—Mr. President, I suppose it to be proper to say that the gentleman from New York (Mr. Mulqueen) is wholly mistaken in the statement that there was any vote in any Republican caucus upon that measure.

Mr. Veeder—Mr. President, I rise to a point of order. It is a breach of faith to divulge the secrets of the caucus.

The President pro tem—The Chair will state that does not go in this Convention.

Mr. Root—It may be a breach of faith, Mr. President, to misstate the action of a caucus. There can be no worse breach of faith than misrepresentation. I do not know how the gentleman obtains the information which he undertakes to deal out upon this floor, but it is from no good or truthful source. Mr. President, I hope the resolution, as offered by Mr. Cookinham, will prevail, and that this Convention will not by any vote upon this floor relieve these gentlemen from the obligations and the opportunity to do their duty, politics or no politics, upon the committees of the Convention.

Mr. Bowers—Mr. President, all that the gentleman from New York has said would be very correct if this had been a deliberative body. When the gentle-

man from New York criticises a misstatement of his caucus, let me state to him that an affirmative assertion requires an affirmative denial of what was done; if he wishes to consider that, he can negative it.

Mr. Root—Will the gentleman please repeat his statement?

Mr. Bowers—We want from you an affirmative denial, which we have not had because you have carefully avoided it. Tell us what did take place, and then you will be in a condition to relieve yourself. (Laughter on the other side.)

Now, Mr. President, having been guided, as we have been during the past three weeks, by the action of this caucus, whatever may have taken place, resolutions having been changed over night, after the caucus met, it does not leave the gentleman free to say that there is any duty to be performed by the minority. Coming to the point of his resolution, and dealing with it seriously, I made my motion in perfect good faith, that it should not be considered to-day. It may be that before this Convention shall have concluded its deliberations, there may be propositions introduced as to the submission of independent articles to the people in such form as to enable minority members to confer with the majority members upon the question of the address to be issued. But, sir, standing as it does to-day with the apportionment article, which, to a man, the minority must oppose, it is a perfect absurdity to ask them to join in the address to the people of the State. I hope the amendment of the gentleman from New York (Mr. Mulqueen) will prevail. As it stands now, you will have difficulty in getting members of the minority to serve upon this committee.

Mr. E. R. Brown—Mr. President, I do not think, at this time, it is becoming to engage in a debate as to whether we should have a Democrat appointed on the committee to issue an address or not. If the President of the Convention, in his wisdom, sees fit to name any gentleman upon that committee who does not wish to serve there, he will be permitted to resign. It seems to me to be purely an attempt upon the part of gentlemen here who are known to be controlled by a single mind, and who are making every effort they are now making, and taking every step they

now take from partisan considerations, to throw this Convention in its last hours into disorder, on the claim that the majority have some organization in the conduct of the business of the Convention. I regard it as discreditable to them.

Mr. Mulqueen—Mr. President, the reason that I have proposed this amendment is that the minority members of the committees of this Convention already have been totally ignored—

(Derisive cries on the other side.)

Mr. Mulqueen — (Continuing) — Sneer if you will, you cannot get rid of the facts in that way. The Democratic minority upon the committee of apportionment proposed a substitute in this house and you refused even to allow a vote to be taken upon it. Now, you would name seven Republicans and three Democrats, and then force them into a position, but if I know anything of the Democrats of this house, they will refuse to be caught by any such trick and they will join, as all the Democrats in this State must join, in denouncing your work as a fraud.

Mr. Cookinham—Mr. President, we will all admit that he must know the Democrats, and I now move the previous question.

The President pro tem put the question shall the main question be now put, and it was determined in the affirmative.

The President pro tem—The question now is on the amendment offered by Mr. Mulqueen, which the Chair will state, however inconsistent it may be with the ideas of the Convention or to the proposition to which it refers; good parliamentary law has the right to be put and acted upon by the Convention. The question is now upon the amendment of Mr. Mulqueen.

Mr. Mulqueen—I ask for a rising vote.

Mr. Blake—What is the amendment?

The President pro tem—The amendment is that no Democrat shall be put upon the committee as provided in the resolution.

The President pro tem put the question upon the amendment of Mr. Mulqueen and it was determined in the negative.

The President pro tem then put the question on the resolution of Mr.

Cookinham, and it was determined in the affirmative.

Mr. Lyon—I offer the following resolution.

The President pro tem—The secretary will read the resolution.

The secretary read the resolution as follows:

Resolved, That the secretary of this Convention be, and is hereby directed to have printed such additional number of copies of the proposed Constitution as may be necessary to supply each member of the Convention with such number of copies as he wishes for distribution, not exceeding in the aggregate thirty thousand copies, each member to at once notify the secretary of the number of copies he wishes, and in the event of the number asked for exceeding thirty thousand copies, the secretary shall apportion the number allowed among the members asking copies.

Mr. Veeder—What is the expense of this resolution?

The President pro tem—This is a resolution for the action of the Convention.

Mr. Veeder—At what expense?

The President pro tem—Does the resolution give rise to debate.

Mr. Kerwin—Mr. President, I rise to debate the resolution.

The President pro tem—It must go over under the rules.

Mr. Tekulsky—Mr. President, I desire to inquire what has been done with the report of the joint committees on privileges and elections and contingent expenses in reference to the expense of counsel fees for the contestants in the Sixth district?

The President pro tem—The resolution in reference to printing the Constitution under the rules must be referred to the printing committee.

Mr. Tekulsky—Mr. President, I ask to know what has been done in reference to the report of the joint committees of privileges and elections and contingent expenses in reference to the expense of counsel fees for the contestants in the Sixth district?

The President pro tem—The Chair is unable to inform the gentleman. He can find out at the secretary's desk.

Mr. Tekulsky—Then I offer the following resolution.

The President pro tem—The resolution of Mr. Tekulsky will be read.

The secretary read the resolution as follows:

Whereas, The committee on privileges and elections and the committee on contingent expenses have reported that the claims of delegates Charles J. Kurth, J. Lott Nostrand, John C. Kinkel, Charles L. Pashley and William Deterling, for expenses and counsel fee in their contest for the seats awarded to them in this Convention is a just and reasonable one, and,

Whereas, It is the sense of this Convention that the said claims should be paid, and,

Whereas, The Convention questions its power to make an appropriation to pay the said claims out of the present fund appropriated to the use of this Convention, therefore be it

Resolved, That the said matter be and the same is hereby respectfully referred to the Legislature of this State with the recommendation that it provide for the payment of said claim.

The President pro tem—The question is on the adoption of Mr. Tekulsky's resolution. This resolution is to call up the report of the committee on contingent expenses.

Mr. Bowers—What does that report refer to, the Buffalo matter?

Mr. Deady—That has been disposed of.

Mr. Bowers—What was the sum?

Mr. Deady—It was audited at \$1,500. I would state, for the information of the Convention, that the expenses of these Gravesend delegates were audited by the committee on contingent expenses and by the committee on privileges and elections at the sum of \$1,500, besides their disbursements, which were a few hundred dollars. The counsel fees were audited at that amount, \$1,500.

The President pro tem—The secretary will now read the resolution again for the information of the Convention.

The secretary again read the resolution.

Mr. Alvord—Mr. President, I move that we do now adjourn.

Mr. Root—I hope not, Mr. Alvord.

The President pro tem—The motion of the gentleman from Onondaga is in order.

The President pro tem put the question on the motion of Mr. Alvord, and it was determined in the negative.

President Choate resumed the chair.

The President put the question on the resolution of Mr. Tekulsky, and it was determined in the affirmative.

Mr. Root—Mr. President, I ask unanimous consent to take from the table the resolution in regard to printing and put it upon its passage. It is important that this resolution should be adopted, so that we can have the printed copies of the Constitution upon our desks when we return here, and so that we can distribute them.

The President—The matter was referred to the committee on printing.

Mr. Root—Mr. President, I move that the committee on printing be discharged from the consideration of that resolution, and that the resolution be now adopted.

Mr. Kerwin—I would like to ask the gentleman from New York by what power he is going to compel the contractors for printing this work to have this work here next Thursday?

Mr. Root—I do not know what power will compel them. We can go no further now than a resolution of the Convention.

Mr. Kerwin—Mr. President—

Mr. Root—Mr. President, I yield the floor no longer. I move the previous question.

Mr. Bowers—Then we object, under the rules, if he moves the previous question. Then we object to the consideration of this matter.

The President—The Chair holds that a motion to discharge the committee on printing does not require unanimous consent; that it is a matter for the disposition of the house, and that Mr. Root's motion for the previous question is in order.

Mr. Kerwin—Then upon the motion for the previous question I call for the ayes and noes.

The President put the question shall the main question be now put, and it was determined in the affirmative.

Mr. Veeder—Let us have the resolution read, won't you, please?

The President—Yes. The question now is on Mr. Root's motion to discharge the committee on printing from the resolution referred to it, and that that resolution be passed. The secretary will read it.

The secretary again read the resolution.

The President put the question on Mr. Lyon's resolution, and it was determined in the affirmative.

Mr. Root—Mr. President, I move that the Convention do now adjourn.

The President put the question on the motion of Mr. Root, and it was determined in the affirmative.

Whereupon the Convention adjourned until next Thursday evening, September 27, at eight o'clock.

The President of the United States
has just received a letter from
the Secretary of the Navy
dated at Washington, D.C.
this 10th of April 1898.

The Secretary has read the letter
and has replied to it.
The President has also read the letter
and has replied to it.
The Secretary has also read the letter
and has replied to it.

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has just received a letter from
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dated at Washington, D.C.
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STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 138.

EVENING SESSION.

Thursday Evening, Sept. 27, 1894.

The Constitutional Convention met in the Assembly chamber in the Capitol, at Albany, N. Y., on the 27th of September, 1894, at 8 o'clock, P. M.

President Choate called the Convention to order.

The Rev. A. M. Boulgourjoo offered prayer.

Mr. Acker moved that the reading of the Journal of the last day's session be dispensed with.

The President put the question on the motion of Mr. Acker, and it was determined in the affirmative.

Mr. Bigelow—Mr. President, I move that the courtesies of the floor be extended to the Hon. Levi Brown. (Carried.)

The secretary called the roll. 124 members present.

The secretary announced the names of the members of the committee on address, appointed by the President, as follows: Messrs. Cookinham, Acker, Root, Hirschberg, E. R. Brown, C. B. McLaughlin, McMillan, Bigelow, Jenks and Maybee.

Mr. Foote—From the committee on revision, presented a report.

Mr. Foote—Mr. President, in connection with the report, I desire to state that the committee on revision have prepared and have placed upon the desks of the members, printed copies of the revised Constitution. There are a few typographical errors in the printed copy, to which we shall call atten-

tion by memorandum, to be handed to the secretary. The report we now submit calls attention to the changes and corrections which we have made. We have also prepared, and will be ready to submit to the Convention, an engrossed copy of the Constitution, the last page of which will be completed in about fifteen minutes.

The secretary read the report of the committee on revision, as follows:

To the Convention:

The committee on revision and engrossment call attention to the following changes and corrections made by the committee in preparing the final draft of the revised Constitution. The reasons for the several changes and corrections, except as stated below, are apparent and seem to require no explanation from the committee.

The location in the revised Constitution of the several new amendments adopted by the Convention are shown in the schedule attached to the printed copy of document No. 72, submitted with this report. The committee have transferred section 9 of article 1, to section 20, of article 3; and section 8, of article 7, to section 1, of article 3. Have stricken out of the last sentence of section 2 of article 2, the words after "Legislature," "at the session thereof next after the adoption of this section," and after the word "shall," the words "and from time to time thereafter may."

Have inserted the words "or Amsterdam" after "Tenth," in the description of the street called "Tenth

avenue," in Senate districts seventeen and nineteen, and the words "or Columbus," after "Ninth," in the description of Senate districts seventeen and nineteen, and the words "or Park" after "Fourth," in the description of Senate districts nineteen, twenty and twenty-one, for the reason that the latter names seem to be the leading names of these streets, in this locality though they are popularly called by the former names.

Have inserted after the description of Senate district twenty the following clause: "All of the above districts in the county of New York, bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line," for the reason that the county of New York extends some, if not all, of these boundary waters.

Have also changed the concluding sentence of the description of Senate district twenty-one by inserting in place of "all that part of the city of New York lying north and east of Harlem River" the following: "All that part of the county of New York not hereinbefore described," thus making this description correspond in form with the description of the last Senate district in the county of Erie.

Have substituted in section 18 of article III, "Appellate Division" for "General Term," and "department" for "district."

Have changed in section 29 of article III, "No person in such prisons, penitentiaries, jails or reformatories" to "No person in any such prison, penitentiary, jail or reformatory."

Have omitted in section 3 of article V, the following clause: "The office of canal commissioner is abolished from and after the appointment and qualification of the Superintendent of Public Works, until which time the Canal Commissioners shall continue to discharge their duties as required by law," and have inserted the word "former" before "Canal Commissioners" in the next sentence.

Have omitted in section 4 of article V the clause "from and after the time when such Superintendent of State Prisons shall have been appointed and qualified the office of Inspector of State Prisons shall and hereby is abolished," and in the preceding sentence have changed "or have heretofore been" to "where formerly."

Have substituted in section 5 of article V, "Superintendent of Public Works" for "Canal Commissioners" at the end of the section.

Have struck out in section 6 of article VII (old section 14, of article VII), the words "Canal Appraisers," and also the clause, "the limitation of existing claims shall begin to run from the adoption of this section; but." Also, the words "to revive claims already barred by existing statutes; nor" in the same sentence.

Have made the proposed amendment as to canal improvement a separate section, being section 10 of article VII.

Have changed "created by" to "mentioned in" after the word "ward" in line 6 of section 15 of article VII.

Have changed the first two lines of section 1 of article X so as to read as follows: "Sheriffs, clerks of counties, district attorneys and registers in counties having registers." And in line 5 of the same section have omitted "all" before the word "counties."

Have stricken out the word "all" before "such" in line 2 of section 2 of article XI.

Have transferred section 9 of article VIII to section 1 of article XII.

Have inserted in section 3 of article XII the words "of the third class or" in place of "the population of which according to the latest State enumeration, from time to time made, is less than fifty thousand; nor."

Have transferred section 1 of article XII to section 1 of article XIII, and section 1, section 2, section 3 of article XV to section 2, section 3, section 4 of article XIII, and section 4 of article XV to section 6 of article XIII.

Have inserted in section 2 of article XIV (page 103, line 11), after the word "delegate," the following: "Elected to the Convention."

Have also changed the numbers of some of the later articles in the Constitution so as to put the subject matter in a more logical order, as for example: Article XII, prescribing oaths of office is now devoted to cities, and the provisions as to oaths of office (formerly article XII), and as to bribery (formerly article XV), are grouped together in article XIII, while the provision as to future amendments (formerly article XIII), now constitute article XIV; while the time when the Constitution shall take effect, formerly the last section of article XIV, now makes article XV and is the final section of the revised Constitution.

Respectfully submitted,

NATHANIEL FOOTE,
Chairman.

Albany, September 27, 1894.

The President—The secretary will now proceed with the reading of the revised Constitution as reported by the committee on revision.

Mr. Hawley—Mr. President, I desire, before the reading of the revised Constitution is commenced, to call the attention of the members of the Convention to the only serious error in the printed copies which are upon the desks. It occurs in the second line of page 62. The error is occasioned, I suppose, by one of those accidents which are unavoidable in a printer's office. The proof-sheet of the matter was entirely correct, but evidently a part of the line dropped out in making up the form, and something else of equivalent length was put in its place. If the members will open their books at page 62, and in the second line of that page will strike out "hundred and ninety-five the jurisdiction of" and insert in place thereof "directed by the court shall be reviewed by," the section will then read correctly. I believe there are no other errors except errors of single letters and of punctuation marks.

The President—The secretary will read the revised Constitution as it comes engrossed from the committee on revision.

The secretary read the proposed Constitution, as follows:

We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I.

Section 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Section 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Section 4. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Section 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Section 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Section 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall first be determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dikes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

Section 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged

as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted and the jury shall have the right to determine the law and the fact.

Section 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, book making, or any other kind of gambling hereafter be authorized or allowed within this State; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

Section 10. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

Section 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Section 12. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Sec. 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

Sec. 14. All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

Section 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid, unless made with the authority, and with the consent of the Legislature.

Section 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been

repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

Section 17. All grants of land within this State, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Section 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

ARTICLE II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in

the election districts in which they respectively reside.

Section 2. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

Section 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

Section 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State

enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

Section 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Section 6. All laws creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner and upon the nomination of such representatives of said parties respectively, as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

ARTICLE III.

Section 1. The legislative power of this State shall be vested in the Senate and Assembly.

Section 2. The Senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members who shall be chosen for one year.

Section 3. The State shall be divided into fifty districts to be called Senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second,

third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirteenth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river and thence around the southern end of Manhattan island to the place of beginning, and also to Governor's, Bedlow's and Ellis' islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven, and within and bounded by a line beginning at Jackson street, and the East river, and running thence

through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third

street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street, and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers, to the place of beginning; and also Randall's island and Ward's island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the county of New York as hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo as at present constituted.

District number forty-eight shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

Section 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding

aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein, adjoining such district. Counties, towns, or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

Section 5. The members of the Assembly shall be chosen by single districts, and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the

State, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

Until after the next enumeration members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member;

Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member; and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location, may be included in

either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the state enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

Section 6. Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the Court for the Trial of Impeachments, and such members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

Section 7. No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

Section 8. No person shall be eligible to the Legislature, who at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city gov-

ernment, his acceptance thereof shall vacate his seat.

Section 9. The elections of senators and members of the assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Section 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

Section 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Section 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

Section 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

Section 14. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

Section 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

Section 16. No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

Section 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable except by inserting it in such act.

Section 18. The Legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the State.

The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested,

whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

Section 19. The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

Section 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

Section 21. No money shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law; making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Section 22. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

Section 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the Legislature by commissioners who have been appointed pursuant to law to revise the statutes.

Section 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Section 25. On the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the

members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

Section 26. There shall be in the several counties, except in cities whose boundaries are the same as those of the county, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In any such city the duties and powers of a board of supervisors may be devolved upon the common council or board of aldermen thereof.

Section 27. The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may from time to time deem expedient.

Section 28. The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.

Section 29. The Legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

ARTICLE IV.

Section 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hun-

dred and ninety-six, and their successors shall be chosen at the general election in that year.

Section 2. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this State.

Section 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

Section 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State. He shall have power to convene the Legislature, or the Senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

Section 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating

the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Section 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

Section 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

Section 8. The Lieutenant-Governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

Section 9. Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections to the other house by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the Governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the

names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within thirty days after such adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more of such items while approving or the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the Legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the Governor. All the provisions of this section, in relation to bills not approved by the Governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

ARTICLE V.

Section 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and the State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section two of this article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

Section 2. The first election of the Secretary of State, Comptroller, Treasurer, Attorney-General and State En-

gineer and Surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

Section 3. A superintendent of public works shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office until the end of the term of the Governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor; subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the Governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the cause of such removal, and shall report such removal and the cause thereof to the Legislature at its next session. The Superintendent of Public Works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the Legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the Superintendent of Public Works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the Superintendent of Public Works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the Governor, in writing, the cause of such removal. All other per-

sons employed in the care and management of the canals, except collectors of tolls, and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The Superintendent of Public Works shall perform all the duties of the former Canal Commissioners, and Board of Canal Commissioners, as now declared by law, until otherwise provided by the Legislature. The Governor, by and with the advice and consent of the Senate, shall have power to fill vacancies in the office of Superintendent of Public Works; if the Senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the Senate.

Section 4. A Superintendent of State Prisons shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of state prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The Comptroller shall appoint the clerks of the prisons. The Superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the Inspectors of State Prisons. The Governor may remove the Superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

Section 5. The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor, and the Superintendent of Public Works.

Section 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

Section 7. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the treasurer.

Section 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

Section 9. Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this State, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

ARTICLE VI.

Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the justices now in office, and of the judges transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of twelve additional justices who shall reside in and be chosen by the

electors of, the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the justices to be thereafter elected in the districts so altered.

Section 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an Appellate Division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. He may also make temporary designations in case of the absence or inability to act, of any justice in the Appellate Division. A majority of the justices designated to sit in the Appellate Division in each department shall be residents of the department. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such depart-

ment to any other department for hearing and determination. No justice of the Appellate Division shall exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court, and those pertaining to the Appellate Division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, one thousand eight hundred and ninety-five, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General Terms, and by the General Terms of the Court of Common Pleas for the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo and the City Court of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

The justices of the Appellate Division in each department shall have power to fix the times and places for holding Special and Trial Terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

Section 3. No judge or justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

Section 4. The official terms of the justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of Justice of the Supreme Court, the same shall be filled for a full term at the next general election happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Section 5. The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers and documents of or belonging to such courts shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the terms for which they were elected, or appointed, be Justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other Justices of the Supreme Court residing in the same counties. Their successors shall be elected as justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the city and county of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such justice or justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.

Section 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any Justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county.

Section 7. The Court of Appeals is continued. It shall consist of the Chief Judge and Associate Judges

now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the Chief Judge and Associate Judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants.

Section 8. When a vacancy shall occur otherwise than by expiration of term, in the office of Chief or Associate Judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor may fill such vacancy by appointment. If any such appointment of Chief Judge shall be made from among the Associate Judges, a temporary appointment of Associate Judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of Associate Judge any longer than until the expiration of his appointment as Chief Judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Section 9. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting

new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The Appellate Division in any department may however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

Section 10. The Judges of the Court of Appeals and the Justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

Section 11. Judges of the Court of Appeals and Justices of the Supreme Court, may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace, and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered upon the journal.

Section 12. The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms except as provided in section five of this article. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. No judge or justice elected after the first day of January, one thousand eight hundred and ninety-four, shall be en-

titled to receive any compensation after the last day of December next after he shall be seventy years of age; but the compensation of every Judge of the Court of Appeals or Justice of the Supreme Court elected prior to the first day of January, one thousand eight hundred and ninety-four, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected; but any such judge or justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court while his compensation is so continued.

Section 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the senators, or the major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment, according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

Section 14. The existing County Courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two county judges and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of six

years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant, exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold County Courts in any other county when requested by the judge of such other county.

Section 15. The existing Surrogate's Courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogate's Courts shall have the jurisdiction and powers which the surrogates and existing Surrogate's Courts now possess, until otherwise provided by the Legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the Legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall

be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of Surrogate's Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases.

Section 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

Section 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. Justices of the peace and District Court justices may be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

Section 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no

inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation any equity jurisdiction, or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

Section 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said justices. The clerk of the Court of Appeals shall keep his office at the seat of government. The clerk of the Court of Appeals and the clerks of the Appellate Division shall receive compensation to be established by law and paid out of the public treasury.

Section 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any Judge of the Court of Appeals, or Justices of the Supreme Court, or any county judge or surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record in this State, or act as referee. The Legislature may impose a similar prohibition upon county judges and surrogates in other counties. No one shall be eligible to the office of Judge of the Court of Appeals, Justice of the Supreme Court, or, except in the county of Hamilton, or, except office of county judge or surrogate, who is not an attorney and counselor of this State.

Section 21. The Legislature shall provide for the speedy publication of all statutes, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

Section 22. Justices of the peace and other local judicial officers provided for in sections seventeen and eighteen in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

Section 23. Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

ARTICLE VII.

Section 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

Section 2. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

Section 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Section 4. Except the debts specified in sections two and three of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and dis-

charge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution, shall be submitted to be voted for or against.

Section 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

Section 6. Neither the Legislature, canal board, nor any person or persons acting in behalf of the State, shall audit, allow, or pay any claim which, as between citizens of the State, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

Section 7. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Section 8. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposi-

tion of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.

Section 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may upon the application of the contractor, cancel such contract.

Section 10. The canals may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section 4 of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the State treasury, or by equitable annual tax.

ARTICLE VIII.

Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be obtained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

Section 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Section 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

Section 4. The Legislature shall, by general law, conform all charters of savings banks, or institutions for saving, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such gen-

eral law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for saving. The Legislature can have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Section 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

Section 6. The Legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Section 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

Section 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

Section 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.

Section 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in

any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten percentum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per

centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Section 11. The Legislature shall provide for a State Board of Charities, which shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a State commission in Lunacy which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a State Commission of Prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

Section 12. The members of the said board of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense.

Section 13. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.

Section 14. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly

or partially under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State board of charities. Such rules shall be subject to the control of the Legislature by general laws.

Section 15. Commissioners of the State board of charities and commissioners of the State commission in lunacy, now holding office shall be continued in office for the term for which they were appointed, respectively, unless the Legislature shall otherwise provide. The Legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

ARTICLE IX.

Section 1. The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

Section 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the Legislature, shall be exercised, by not less than nine regents.

Section 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

Section 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any

school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

ARTICLE X.

Section 1. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the Legislature shall direct. Sheriffs shall hold no other office, and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

Section 2. All county officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Section 3. When the duration of any office is not provided by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Section 4. The time of electing all officers named in this article shall be prescribed by law.

Section 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold

his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Section 6. The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday in January.

Section 7. Provisions shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Section 8. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution.

Section 9. No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other state officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

ARTICLE XI.

Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter, created by the laws of the United States, or by the Legislature of this State.

Section 2. The Legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

Section 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the Legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriation for the maintenance thereof.

Section 4. The Governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term

for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals.

Section 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

Section 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

ARTICLE XII.

Section 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

Section 2. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and

within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

Section 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and

ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

ARTICLE XIII.

Section 1. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

Section 2. Any person holding office under the laws of this State, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall

be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

Section. 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

Section 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Section 5. No public officer, or person elected or appointed to a public office, under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney-General. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

Section 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article

which may have come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this State, within such county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

ARTICLE XIV.

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

Section 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every Senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which Members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall

convene at the Capitol on the first Tuesday of April next ensuing after their election and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the Convention, the yeas and nays being entered on the journal to be kept. The Convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the Convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed Constitution or constitutional amendment which shall have been adopted by such Convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

Section 3. Any amendment proposed by a Constitutional Convention relating to the same subject as an amendment proposed by the Legislature, coincidentally submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if ap-

proved, be deemed to supersede the amendment so proposed by the Legislature.

During the reading of the report, and before the hour of ten had arrived, Mr. Root said:

Mr. President, I move that the session be extended sufficiently to permit the secretary to finish the reading of article 14 of the proposed Constitution, and that we then adjourn to twelve o'clock to-morrow. There are a number of members of the Convention who are now on trains coming from their homes to this place who will not be here until to-morrow, and I think it desirable that they should have an opportunity to be heard.

Mr. McClure—Mr. President, I hope the motion to adjourn until twelve o'clock to-morrow will not be adopted. Certainly notice enough of the intention of this Convention to meet to-night and to proceed promptly to the completion of the work was given, to warn us in going on. Every member of the Convention, I judge, is here at some expense of convenience and comfort and business. Next week is the opening of the courts, and to the 130 lawyers of this Convention it is important that they should be in attendance, and that they should have some time previously for the preparation of their legal business. I think, sir, it is entirely wrong to ask the members to do nothing for half a day to-morrow, and to wait the convenience of some half a dozen men, perhaps, who have not seen fit to start in time and leave political matters so as to be ready this evening. No reason has been given to this Convention why we should not assemble to-morrow morning at the usual hour and proceed as rapidly as possible with our business. We were given to understand that only formal business, the closing up of the business of the Convention, the doing of something—so far as I am concerned, I have been given no intimation of what it is—but the doing of something which was to finish up the business. Now, sir, as a member of this Convention, who is here at a considerable sacrifice of business, comfort and convenience, I protest against the loss of time which will be incurred by doing nothing for half a day to-morrow. If there is a necessity for conference and caucus, and arrangement and decision as to how to do this thing, which should have been arranged during the recess, let it be done to-night or in the early

hours of the morning. It is not a fair or sufficient reason to suggest, not one that appeals to me as sufficient, to say that to meet the convenience of the occupants of the desks that are now vacant, and they are very few, we are to do nothing for a whole half day. I am perfectly willing the motion to the extent of extending the time to finish the reading should be carried, but I move to amend it so as to provide that when we adjourn to-night it shall be to meet to-morrow morning at ten o'clock, and to proceed with the business of the Convention. I will make the time nine, if necessary. I am anxious to get through with it. If there is any merit in this thing, let the people have it at once and be done with it. I ask that the question be divided, and that it be first taken on the extension of the time to-night.

Mr. Bowers—Mr. President, I would be very glad if the majority would recall the fact that when the adjournment was taken until this evening it was urged that the adjournment be taken until to-morrow morning, and against such suggestions the proposition to adjourn until this evening was pressed and carried. Under those circumstances it seems to me that the majority are not justified in making us waste two hours to-morrow morning. There really is no good reason why the business should not be proceeded with to-night of whatever character the majority intend to do. But as usual the minority do not object to any reasonable adjournment to facilitate the work of the majority, and if they wish not to vote to-night and prefer to wait until to-morrow morning, I do not sup-

pose any objection will be made. But we do strenuously oppose the delay of two hours to-morrow morning, and particularly in view of our request that we should not be called back until to-morrow.

Mr. Veeder—Mr. President, would it be in order to move that the session be extended until the secretary shall have finished the reading.

The President—That is Mr. Root's motion.

Mr. Veeder—His motion was to adjourn when the reading of article 14 was completed, as I understand it.

The President—There are only a few lines remaining. The request has been made to have the question divided, but it cannot be divided if Mr. McClure insists upon his amendment.

Mr. McClure—I certainly insist on my amendment, but I yield to the decision that it cannot be divided.

The President put the question on the adoption of Mr. McClure's amendment, and it was determined in the affirmative by a rising vote, ayes 56, noes 48.

The President—The question is now upon the request of Mr. McClure to have the question divided.

Mr. McClure—I withdraw my request, Mr. President.

The President put the question on the motion of Mr. Root, as amended by Mr. McClure, and it was determined in the affirmative.

The reading of the proposed Constitution to the end of section 4 being concluded, the Convention adjourned until to-morrow morning at ten o'clock.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 139.

Friday Morning, Sept. 28, 1894.

The Constitutional Convention of the State of New York met in Assembly chamber, at the Capitol, Albany, N. Y., Friday morning, September 28, 1894.

The President called the Convention to order at 10 o'clock.

The Rev. M. Woolsey Stryker, D. D., offered prayer.

On motion of Mr. Acker, the reading of the Journal of Thursday evening, September 27th was dispensed with.

The President—I propose that the privileges of the floor be extended to the Rev. Dr. Stryker, president of Hamilton College, who has kindly assisted us this morning in opening the Convention. If there are no objections the privileges of the floor will be accorded him.

The secretary will proceed with the reading of the last clause of the engrossed Constitution.

The secretary proceeded to read article 15, as follows:

ARTICLE XV.

Section 1. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five except as herein otherwise provided.

Done in Convention, at the Capitol in the city of Albany, the day of September, in the year one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

Mr. Hottenroth—Mr. President, I desire to call the attention of the Convention to a material variance in document No. 72, as compared with document No. 71. There appears to be a difference between those documents and the engrossed Constitution in reference to the amendment as it was passed. I allude to the apportionment amendment. On page 20 of document No. 72, at the bottom of the first paragraph, we have the words, "and all that part of the county of New York not hereinbefore described." Now, the attention of the Convention was called to the fact that certain blocks in the lower section of the city had been omitted, and in one instance that was corrected. Now, the result of this might be that in the twenty-first district we might have tacked on certain portions of the city of New York in the lower portion thereof. It appears to me that this is evidently an oversight on the part of the committee on revision, and will result in legislation, that is, will result in putting into this Constitution an amendment which was not adopted or not discussed. I think that the Convention ought to take some action upon it.

Mr. Foote—Mr. President, in reply to the inquiry of the gentleman, I would say that the report which the revision committee submitted at the opening of the session last evening, and which was read in the hearing of the Convention and which, perhaps, the gentleman did not hear, gave the reason for that change. It was mainly to conform the description of that section to the form which had been used in the

description of the remaining section in the county of Erie. The form as adopted in the Convention provided that Senate district No. Twenty-one should embrace all the remainder of the county of New York lying north and east of the Harlem river. It was so framed that it would perhaps exclude from the boundaries of that district the bed of that river and the bed of the portion of the East river. The committee thought that there might be some islands which might or might not properly be included in that district, and it thought it wiser and safer to conform the description to the description used in the county of Erie, to embrace the remainder of the county not included in other districts.

Mr. Bowers—Mr. President—

The President—The Chair would state what the question before the house now is. The question is upon approving the report of the revision committee and adopting the form of the Constitution proposed by them.

Mr. Bowers—Mr. President, if I understand the explanation of the chairman of the committee on revision, it is this: That it being well known that there were discrepancies in the county of New York; that it was highly probable that portions of districts had been omitted and other errors of that kind, which it was impossible for the revision committee to correct, because of the fact that there was no exact census in existence, these gentlemen now propose to cover all errors and deficiencies of every nature by providing that the most northern district of that county shall embrace all portions which by accident or design have not been included in the other Senatorial districts. They conclude the description of the Twenty-first Senatorial district with this language: "And all that part of the county of New York not hereinbefore described." I can see no meaning whatever to it unless it is to take a section of the city in some other Senatorial district which has been omitted from that district and include it in this Twenty-first district. In other words, it is a confession now, on the part of the committee on revision, that the Convention has not and cannot divide properly the county of New York. I am inclined to think that Mr. Hottenroth's criticism is somewhat out of grace because this dealing with the subject is exactly in accordance with all the work of the committee on leg-

islative apportionment as I understand it at the present time. I suppose that they would not think it at all improper to provide that the Fiftieth Senatorial district should include all parts of the State that was not taken care of. If that is the situation, and it is hoped to include in the Twenty-first district omitted portions of the city of New York, why we of the minority have a right to criticise the careless manner in which the work of this Convention has been done. As this is to cover all those errors why, of course, the majority will put it through, but it is very proper that their attention be called to it by Mr. Hottenroth at this time.

The President—The question is on approving the report of the committee on revision and adopting the form of the Constitution recommended and reported by them.

Mr. Bowers—May we have the ayes and noes upon that?

Mr. I. S. Johnson—Mr. President, I would like to ask for information, whether any amendments are now in order?

The President—The Chair supposes that that is within the control of the Convention.

Mr. I. S. Johnson—Then, Mr. President, I offer the following amendment.

The President—I think it should be in the form of a motion to recommit with instructions to amend.

Mr. Johnson—Then I would move to recommit to the committee with instructions to add the following.

The President—Which committee?

Mr. I. S. Johnson—The committee on revision. I know of no other committee.

Mr. McClure—Mr. President, I rise to a point of order. The committee on revision has no power to act upon an amendment.

The President—The Convention has the power to act. Mr. Johnson moves to recommit to the committee on revision with instructions to amend forthwith by adding a clause and reporting it.

Mr. Veeder—Mr. President, cannot we hear what it is?

The President—The secretary will read it.

The secretary read Mr. Johnson's motion, as follows:

"Mr. I. S. Johnson moves to recommit to the committee on revision, with instructions to amend by adding at the end of section 3, article 14, the following: Article 15, section 1. The Legislature, at its first session after the adoption of this Constitution, shall appoint three commissioners, whose duty it shall be to report to the Legislature bills for the assessment and collection of taxes and the exemption of property from taxation throughout the State, and also respecting the rights, duties and liabilities of employers and employes; such commissioners to hold office for such time as the Legislature shall provide, not exceeding two years."

Mr. Galinger—Mr. President, I move that Mr. Johnson's motion lie upon the table.

The President put the question on the motion of Mr. Galinger, and it was determined in the affirmative.

The President—The question now is on the report of the revision committee in the form recommended and adopted by them. Mr. Bowers calls for the ayes and noes. Those in favor of sustaining Mr. Bowers' call for the ayes and noes please rise and be counted to the number of twenty-five.

The call for the ayes and noes was sustained.

The secretary proceeded to call the roll.

Mr. Goodelle—Mr. President, is it in order to make a motion that this be referred back to the committee on revision, with instructions to strike out in section 10 of the article relating to canals the words "by equitable annual tax." If so, I would like to have an opportunity to make that motion.

The President—The Chair is of the opinion that at this stage in the proceedings no such motion can be entertained, except by express order of the Convention.

Mr. Hawley—Mr. President, I make the point of order that the roll call has commenced. The first name has been called, and nothing is in order but the call of the roll.

The President—I think that that point is well taken. The secretary will proceed with the call.

The secretary continued the call of the roll.

Mr. McClure—Mr. President, I beg pardon for interrupting the roll call, but I would ask that the statement of the President in reference to what we

are voting upon be repeated, so that we may understand exactly what we are doing.

The President—The final vote is now being taken under rule 74, which the Chair understands is the adoption of the report of the committee on revision and on the form of the revised Constitution reported by them.

Mr. McClure—The Chair uses the term "adoption of the Constitution as revised by them." I only wanted to know whether it was the adoption or reception.

The President—The gentleman can study the rule himself.

Mr. Bigelow—Mr. President, if this is an acceptance merely of the report of the committee on revision, I vote aye. If it is a vote also for the adoption of the Constitution, as I propose to oppose some portion of that instrument, when I have an opportunity, I vote no.

The President—The Chair will say this:

The amendments incorporated into this Constitution reported by the committee on revision have received their final passage by yea and nay votes of a majority of all the delegates elected to the Convention. As the Chair understands, this is an adoption of the report and of the form in which the Constitution has been finally placed by the committee on revision, and requires only a majority of a quorum.

Mr. Bowers—That, Mr. President, does not answer the question.

Mr. Bigelow—Is it an adoption of the report of the committee or the adoption of the Constitution?

The President—The Chair is of the opinion that it is both.

Mr. Bigelow—Then I vote no.

Mr. Kerwin—Mr. President, I was in hopes that when this Convention assembled for the final adoption of the report of the committee on revision—

The President—Mr. Kerwin is not in order to interrupt the roll call for any remarks.

Mr. Kerwin—I vote no.

Mr. Nicoll—Mr. President—

The President—Mr. Nicoll it is not in order, under the rules as they now stand, to interrupt a roll call.

Mr. Nicoll—I beg your pardon. I vote no.

Mr. Alvord—Mr. President, I ask the Chair whether or no I have the right to explain my vote?

The President—Not under the present rules, unless by unanimous consent of the house.

If there are no objections unanimous consent will be granted Mr. Alvord.

Mr. Alvord—Mr. President, if this is a question on the adoption of the Constitution, I am in favor of voting no. If it is a mere question of proposing that the committee on revision have done their work correctly, I should vote aye. Under the circumstances, not knowing what the facts are and being informed almost universally around me that it is a question on the general adoption of the Constitution, I shall withdraw my request to be excused and vote no.

Mr. I. S. Johnson—Mr. President, may I have an opportunity to make a few remarks.

The President—Not in order.

Mr. I. S. Johnson—I vote no.

Mr. Bowers—I ask, Mr. President, that Mr. Johnson have unanimous consent.

Objection was made.

Mr. Gilbert—Mr. President, I suppose under the rules I have no right to explain my vote, but I would ask unanimous consent to say one explanatory word.

Objection was made.

Mr. Gilbert—I vote aye.

The President—The Constitution is adopted and the work of the committee on revision approved by a vote of 93 ayes and 46 noes. (Applause.)

The following is the vote:

Ayes—Messrs. Abbott, Acker, Ackertly, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A.; Brown, E. R.; Cady, Carter, Church, Clark, G. W.; Clark, H. A.; Coleman, Cookinham, Cornwell, Countryman, Crosby, Davies, J. C.; Davis, G. A.; Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Fuller, C. A.; Fuller, O. A.; Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Hirschberg, M. H.; Holls, Jacobs, Johnson, J.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lincoln, Lyon, Manley, Mantanye, Marshall, McArthur, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Mereness, Moore, Morton, Nichols, W. H.; Nostrand, O'Brien, Parker, Parkhurst, Pashley, Phipps, Pool, Porter, Powell, Putnam, Redman, Root,

Spencer, Springweiller, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Wiggins, Woodward, President—93.

Noes—Messrs. Alvord, Banks, Bigelow, Blake, Bowers, Burr, Campbell, Chipp, Jr.; Danforth, Davenport, Deady, Dean, Deyo, Durnin, Emmet, Fitzgerald, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, A. H.; Green, J. I.; Griswold, Herzberg, A.; Holcomb, Hottenroth, Jenks, Johnson, I. Sam; Kerwin, McClure, Nicoll, De L.; Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Rowley, Sandford, Titus, Tucker, Veeder, Williams—46.

Mr. Veeder—Mr. President, is it possible that we shall not have the names read as to how that vote is?

The President—Have you requested it?

Mr. Veeder—I have tried to.

The President—The secretary will read.

The secretary proceeded to give a detailed statement of the vote.

Mr. I. S. Johnson—Mr. President, I desire to change my vote from the negative to the affirmative.

Mr. McClure—Mr. President, I make the point of order that it is too late to make a change in a vote. This is a simple statement of how members have voted.

The President—The point is well taken. It is too late. Mr. Johnson's statement will be entered upon the Journal. Does any other gentleman who has not voted wish to have it recorded upon the Journal how he would have voted.

Mr. Smith—I vote in the negative.

The President—Is it too late to have the gentleman's name recorded. It will be entered upon the journal that he desired to vote in the negative.

Mr. Vedder—Mr. President, I move the Convention now take a recess until two p. m. to-day, and upon that I move the previous question.

Mr. President—May I address a question to the gentleman through the Chair?

Mr. C. B. McLaughlin—I object.

Mr. Bowers—You don't dare discuss it.

Mr. A. H. Green—Mr. President—

The President—Mr. Green desires to be heard.

The President—If no one desires to be heard the question will be on Mr. Vedder's motion.

Mr. Bowers—We all desire to be heard.

The President—No one desires to be heard.

Mr. Bowers—Mr. President, I rise to a question of privilege. With all due respect I challenge the statement of the Chair, that no one desires to be heard.

The President—I understood you to state that no one wanted to be heard.

Mr. Bowers—We said we all wanted to be heard.

The President—That is substantially the same thing. (Laughter.)

The President put the question, shall the main question now be put, and it was determined in the affirmative.

A count was called for and Mr. Lester and Mr. Schumaker acted as tellers, and announced the vote 81 to 43.

The President—The previous question is ordered.

The President put the question on Mr. Vedder's motion to take a recess until two o'clock, and it was determined in the affirmative.

Whereupon the Convention stood in recess until 2 P. M.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 140.

AFTERNOON SESSION.

Friday Afternoon, Sept. 28, 1894.

The Constitutional Convention of the State of New York met in the Assembly chamber, at the Capitol, Albany, N. Y., Friday afternoon, September 28, 1894, at two o'clock.

The President—The Convention will come to order and the secretary will call the roll, to ascertain the presence of a quorum.

The secretary called the roll and 102 members responded to their names.

The President—A quorum is present. What is the further pleasure of the Convention?

Mr. Hedges—Mr. President, I move that the compiler be directed to forward to the members by mail the incompleting files when printed. That is, the Record, Journal, and such other matter that will complete the files.

The President put the question on the motion of Mr. Hedges, and it was determined in the affirmative.

The President—Something should be done, probably, as to the document room until the printing is completed.

Mr. Hill—Mr. President, I move you that the document room be kept open until the publication and distribution of the documents ordered by the Convention has been accomplished.

The President put the question on the motion of Mr. Hill, and it was determined in the affirmative.

Mr. Lester—Mr. President, I move that the sergeant-at-arms of the Convention be left here in charge of the document room, and also with instructions to receive and forward such mail matter as may be sent here to the members, and also forward the Constitution which is to be printed.

The President—I understand a resolution has been prepared under the direction of the secretary that will cover that and more, if you will suspend that for a moment.

The Chair has taken the liberty of requesting the Secretary of State to attend this afternoon upon the signing of the Constitution, and to receive it under the law.

Mr. Holls—Mr. President, I rise for information to ask whether, in the absence of a resolution to that effect, the new Constitution is to be signed by anyone except the officers of the Convention?

The President—The Chair is of the impression that the precedent of the Convention of 1867 is a safe one to follow, for the Convention to instruct the President and secretary to attest the copy of the Constitution that was adopted.

Mr. Holls—I make that as a motion.

The President—Mr. Holls moves that the President and secretary be instructed to attest the engrossed copy which was adopted this morning of the revised Constitution, they to decide in behalf of the Convention.

The President put the question on the motion of Mr. Holls, and it was determined in the affirmative.

The President—There were some resolutions laid upon the table that were reported by the committee on contingent expenses. Does Mr. Lyon desire to call them up?

Mr. Lyon—I do not think I care to. They were adverse reports of the committee.

Mr. Goodelle—Mr. President, I call up the report in reference to Mr. Seacord.

The President—The secretary will please find the resolution offered in respect to Mr. Seacord. The secretary will read it. The gentlemen will give attention.

The secretary read the resolution as follows:

"By Mr. Goodelle: Whereas, Mr. Edward M. Seacord, of Cortland, was appointed a messenger and has only received pay as such; but by reason of the lack of sufficient clerical force and the necessity of the aid of additional clerks to make the work of committees and of the Convention effective, he has been ordered to act as clerk, and he has acted as such from May 23, 1894, and has been an efficient and faithful clerk, performing with marked ability all additional services put upon him,

Resolved, That as one of the necessary expenses of the Convention, he be paid for his additional service and responsibility the further sum of three dollars per day for the services from May 23, 1894, making his pay the same as that of other clerks, and the payment thereof is hereby authorized and directed to be made out of the fund appropriated for the expenses of this Convention.

The President—The secretary will read the report of the committee on this resolution.

The secretary read the report as follows:

Mr. Lyon, from the committee on contingent expenses, to which was referred the annexed claim of Edward M. Seacord, a messenger of the Convention, for additional compensation of three dollars per day from May 23, 1894, on account of services performed by him in clerical work as committee clerk, would respectfully report, that in the opinion of three of the members of said committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmyer, Pashley and Lyon, the said charge is not a proper charge and that the Convention has not the power to allow or pay said claim.

GEORGE F. LYON,
Chairman.

Mr. Goodelle—I ask, Mr. President, that the report of the committee be

disagreed to, and I desire to say a single word upon the claim that has been put in for Mr. Seacord. Mr. Seacord was appointed as a messenger of this Convention. There are about thirty committees designated by the Convention, and I believe ten clerks were provided by the law to act for the Convention, so that practically every clerk had three committees to attend to, if committees had clerks. A clerk was designated for the committee on cities and the committee on suffrage. It was absolutely impossible for that clerk to attend to the duties of both committees. Those committees were sitting at the same time, and the committee on cities was sitting almost constantly, and the committee on suffrage had very many meetings and the result was that it was utterly impossible for the clerk designated to do the work of those two committees. I called the attention of the President to the situation, and when it was suggested that the committee on suffrage would very likely need a stenographer, I suggested to the President that we could get along without a stenographer, and that if Mr. Seacord could be designated to act in the capacity of another clerk, that that would relieve the difficulty. Mr. Seacord was designated to act as assistant clerk by the President of the Convention.

He served as such, acting as clerk for the committee on suffrage when the regularly appointed clerk could not act. He has also acted as clerk for the committee on cities, the committee on legislative powers and the committee on legislative organization, and his entire time has been spent in performing the work first for one committee and then the other. Now, Mr. Seacord is a gentleman of mature years, about thirty-five years, and I say from personal knowledge that if there is an attendant upon this Convention that has been faithful in his duties and has discharged them well, it has been Mr. Seacord. I know of no reason why, when a person has been appointed for one place and has been assigned by the President to act in another, he should not receive pay for the work he has performed.

In regard to the proposition made by the committee on contingent expenses that this Convention has not the power, or a question of power, to make this additional expense for extra pay, I cannot subscribe to it. It has simply come down to the question that more labor was needed for these committees.

There was more labor needed in order to perform the work of this Convention. This Convention had the right, as I have no doubt, to perform the work that was incumbent upon the Convention, and when a person designated to perform the services as messenger has acted as clerk, I do not see why he should not receive pay as clerk. It is only in justice, and I do not believe it is economy in this Convention to split hairs upon servants that have been faithful in the discharge of their duties and have earned all they are asking here to-day. I hope the report of the committee will be disagreed to and the additional allowance of three dollars a day, which is not so much as some of the clerks of the Convention are receiving (some of them are receiving seven dollars per day), that that additional pay be allowed to Mr. Seacord, in justice.

Mr. Dean—Mr. President, article 3, section 24, of the Constitution of the State of New York, which we have taken an oath to sustain, provides that the Legislature shall not, nor shall a board of supervisors or common council of any city, grant any extra compensation to any servant, agent or contractor. It seems to me that this Convention might at least live within the letter of the spirit of the Constitution, and that the majority report of that committee ought to be sustained.

Mr. Lyon—Mr. President, the committee on contingent expenses based their report largely upon these facts: The act of 1894 authorized the employment of certain assistants, designating them as messengers, pages and other officers. It then provides that the salaries of these employes shall be the same as the salaries of like employes of the Legislature. The salary of a messenger in the Legislature is three dollars per day for seven days in the week, or twenty-one dollars. The section 24 of the Constitution to which Mr. Dean has referred provides that the salary of no employe shall be increased, and the committee on contingent expenses, therefore, the majority of the committee, believed that the Convention had no power to make any increase. Mr. Seacord has undoubtedly performed the duties of a clerk, but whether those duties were more arduous than that of a messenger is a question. There is a large number of other messengers that have performed other duties. In addition to that, rule 22 provides that the President may

designate a messenger for any other purpose. Mr. Seacord accepted his position, knowing what the salary was and that he could be designated for any other work.

Mr. Alvord—Mr. President, I desire to ask a question of the members of this Convention. I hold (I may be mistaken and I will be corrected if I am wrong) that the Legislature of the State of New York, under the Constitution, is bound to give to the people the right to call a Convention, and that they are further bound to set that Convention in motion. But supposing that the Legislature undertook to pass a law by which they said we could meet but could have no service; are we to have no servants? Are we to have no one to help us with our business? I hold, sir, that the Legislature have accomplished their duty under the Constitution when they have put the Convention into being, and there their power ends; and if we shall see fit, if we come to the conclusion in reference to having employes enough to carry on our business, it is our business and not the business of the Legislature, and the Legislature has no right to put it into a statute. I ask gentlemen to reflect upon this and see whether or no we are to be bound hand and foot right in the face of the Constitution which says there shall be a Constitutional Convention once in twenty years, and when that Constitutional Convention has been established by the Legislature they are above and beyond the Legislature.

Mr. Goodelle—Mr. President, I desire to say, in reply to a question that has been asked me, that Mr. Seacord has been paid three dollars a day, and I desire to say that Mr. Seacord has made up the reports of the committee on suffrage as well as the reports of several other committees.

Mr. McClure—Mr. President, I do not desire to interfere in any way and would ordinarily leave the matter to be disposed of by my friends of the majority. But, in simple justice to the gentleman in question, I desire to state that not only, as stated by the chairman of the committee on suffrage, Mr. Seacord gave valuable clerical service to that committee, but also that he rendered services as clerk to the forestry committee. While he was not regularly assigned to that committee, another gentleman having been assigned to the committee that was clerk

to another committee, yet at the same time he attended to the sending out of invitations of meetings and other clerical work. Because of that fact, I believe that I ought to say what I have said, and to add that it seems to me that in justice to him he should receive something more than mere messenger's compensation. It is a small amount, and in a body like this that required immediate, prompt and intelligent service, there ought to be no hesitation on the part of the members to vote to give him this additional sum.

The President put the question on the motion of Mr. Goodelle to disagree with the report of the committee on contingent expenses, and it was disagreed to.

Mr. Goodelle—I have a resolution, Mr. President, but I do not know whether it is necessary.

The President—Nothing more is required as the matter has been taken care of in the resolution already acted upon.

Mr. McMillan—Mr. President, I desire to call up the resolution in regard to Mr. Rochford, clerk in the financial secretary's office.

The secretary will read the resolution.

The Secretary read the resolution as follows:

"By Mr. Kurth: "Whereas, Thomas Rochford was on the 22d day of May, 1894, duly appointed a messenger of this Convention, and duly qualified and entered upon his duties as such, and,

Whereas, Thereafter, and on the twenty-ninth day of May, he was transferred to the office of the financial secretary of the Convention and therein required to do clerical work and assist in making up the pay rolls and receipts of the Convention and, as well, performed duties as messenger in said office,

Resolved, That said Thomas Rochford be and he hereby is entitled since the twenty-ninth day of May to such pay as is commensurate with such added duties and work required and performed by him.

The President—The report accompanying this resolution will also be read.

The secretary read the said report as follows:

Mr. Lyons, from the committee on contingent expenses, to which was referred the amended resolution reciting

that Thomas Rochford be and hereby is entitled since the twenty-ninth day of May last to such pay as is commensurate with such added duties and work required and performed by him, would respectfully report:

That Thomas Rochford was appointed a messenger of this Convention on May 22, and was on May 29 assigned by the secretary of the Convention to assist the financial secretary in clerical work, and has so assisted since that time; that Mr. Rochford has received for his services three dollars per day for seven days each week, which is the compensation allowed messengers of the Legislature; that four members of the committee on contingent expenses favor an additional allowance to Mr. Rochford, and three members of the committee are opposed to any additional allowance.

GEORGE, F. LYON,

Chairman.

Mr. McMillan moved to amend as follows:

Resolved, That the amount of compensation to be paid to Thomas Rochford for extra services rendered as assistant to the financial secretary be the sum of two dollars per diem from May 29, 1894, to the final adjournment of this Convention, and that the payment thereof out of the fund appropriated for the expenses of this Convention be and is hereby authorized and directed.

Mr. McMillan—Mr. President, I move the adoption of the report which is in favor of allowing two dollars per day to Mr. Rochford. I wish to state that Mr. Rochford was transferred as messenger to the position of clerk in the financial secretary's office, and, as every delegate knows, he has been there in season and out of season, and has performed intelligent and valuable service. I think he is entitled to the extra compensation asked.

Mr. Dean—Mr. President, in the language of the Hon. Timothy J. Campbell, "What is the Constitution among friends?" I withdraw any opposition.

The President—Mr. Dean withdraws any opposition. (Laughter.)

The President put the question on the adoption of the report of the committee allowing Mr. Rochford two dollars a day extra, and it was determined in the affirmative.

Mr. A. B. Steele—Mr. President, I desire to call up the resolution offered by me some days ago concerning Mr. A. B. Crumb.

The President—The secretary will read the resolution and the report of the committee on contingent expenses. Mr. Crumb presents a bill for extra services rendered by him as assistant postmaster in addition to his duties as messenger.

The secretary read the following:

"The People of the State of New York,
To Albert B. Crumb, Dr:

To extra services rendered by him as assistant postmaster of the Constitutional Convention, in addition to his duties as messenger from May 21st. to September 15th, 1894, inclusive, being in all, one hundred and seventy days at \$3.00 per day, amounting to \$351.00."

"On motion of Mr. A. B. Steele:

"Whereas, Albert B. Crumb, one of the messengers at this Convention, has continuously acted as assistant postmaster since May 21st, now, therefore, it is hereby

Resolved, That an additional sum of three dollars per day be allowed and paid to said Crumb for his services as assistant postmaster."

"Mr. Lyon, from the committee on contingent expenses, which was referred to annexed claim of Albert B. Crumb, a messenger of the Convention, for additional compensation of three dollars per day from May 21st, 1894, amounting to the sum of \$351.00 on account of services performed by him in the Convention post-office, respectfully report: That in the opinion of three of the members of the committee, Messrs. Faber, Green and Tekulsky, the charge is reasonable and proper, and should be allowed and paid by the Convention; and that in the opinion of four of the members of said committee, Messrs. Brown, Whitmeyer, Pashley and Lyon, the said charge is not a proper charge, and that the Convention has not the power to allow or pay said claim.

GEORGE F. LYON,
Chairman."

Mr. A. B. Steele—Mr. President, I move to disagree with the report of the committee, and that the resolution offered by me be adopted, extending down to the present time.

Now, it is a fact that Mr. Crumb has been in the post-office since the twenty-first day of May. He, prior to that time, had experience in a post-office, and, therefore, was an efficient man. Without him it would have been impossible for the postmaster to have performed the duties that were neces-

sary to be performed. I believe, Mr. President, that it was an omission on the part of the Legislature in preparing this bill, that no provision was made for an assistant postmaster. I have been informed that, in the Legislature, there is always, and necessarily always, an assistant postmaster. Mr. Crumb has served faithfully and has performed the duties of assistant postmaster, and has not been paid for that, but only been paid the sum of three dollars per day as messenger. It seems to me that it is no more than right and fair to Mr. Crumb that he should be treated the same as the other gentlemen, and that the additional compensation of three dollars per day be allowed to him from the time he commenced to act, to wit: From the twenty-first day of May up to the present time.

Mr. Lyon—Mr. President, this claim of Mr. Crumb was before the Convention immediately after it opened. The claim is reported adversely upon by the committee on contingent expenses, and the report was unanimously agreed to by the Convention. In my opinion, there is no messenger who is more entitled to additional compensation than Mr. Crumb. I have, however, held and the committee on contingent expenses, by a majority vote, held that, in their opinion, the Convention have no authority to allow any such compensation.

Mr. E. A. Brown—Mr. President, as one of the members of the committee who voted against this claim, I desire to say but one word. My decision and the decision arrived at by the other members of the committee who voted against this claim was that constitutionally we could not and had not the power to increase the pay of the employes of this Convention, any more than the Legislature has the power to increase the compensation of any employe of the Legislature. I further voted against the allowance of any of these claims, and I find nothing since to change my reasons for so voting.

The President—The Chair hopes the gentlemen will understand this matter before the vote is taken. It appears by the statement of Mr. Lyon that the question was brought up, and when Mr. Crumb entered upon these additional duties, if they were additional, and it was decided against paying him. Now, after they have been performed, the

motion is made that such additional allowance be paid.

Mr. Dean—Mr. President, I desire to offer a substitute. There is no use of going at this by piece-meal, but it should be attended to so as to include everybody.

The President—Is this offered in all seriousness?

Mr. Dean—It is in all seriousness.

The President—The secretary will read Mr. Dean's resolution.

Resolved, That the compensation of all the delegates of the Convention, and that of the officers, employes, attaches and page boys, be, and the same is hereby doubled, and that this resolution be deemed to take effect on the 8th of May, 1894.

The President—Mr. Dean having had the pleasure of offering that, does he insist upon it?

Mr. Dean—I withdraw it.

Mr. A. B. Steele—Mr. President, I do not see why any distinction should be made. Precisely the same condition of affairs existed in reference to the other cases.

The President put the question on disagreeing with the report of said committee and that the resolution offered by him be adopted, and it was determined in the affirmative.

Mr. W. H. Steele—Offered the following resolution:

Whereas, the compensation of the clerks of the committees was fixed at seven dollars per day, a sum greater than that received by the secretaries of the Convention, therefore, be it

Resolved, That the secretary be, and he hereby is allowed five dollars per day additional, and that each of the assistant secretaries be and they hereby are, allowed four dollars per day additional, to date from the 8th day of May last, and the Comptroller is hereby authorized and directed to pay the same out of the funds set apart for the Convention.

Mr. W. H. Steele—Mr. President, I desire to make a few remarks upon this resolution. During February last I spent about five weeks with the Legislature in my efforts to get the number of employes for this body increased. After much labor, bringing to my assistance all the power that I could in this Capitol. I was able to increase the number of employes in this body, but not as much as I felt it needed. I thought we were honestly entitled to

sufficient clerical assistance to carry on the work of the Convention, and finally managed to have passed through the Assembly and Senate the amendment to the act of 1893, increasing the number of employes in this body by fifteen. The old act gave this Convention no clerk whatever. The amendment was to give the President a clerk and the Convention a postmaster, nine clerks in committees, striking out four of the doorkeepers, and changing the fifteen messengers to ten messengers and ten pages. This resolution was brought to me about six weeks ago. I said to the gentleman who brought it that I thought this Convention had not the power to increase the pay of any of its employes. I think so still, but I promised to offer it if the others were adopted. However, the Convention has overruled my opinion and the judgment of the Convention should be better than that of any one member. I think, sir, it is a great wrong to these gentlemen that the pay of minor officials should be increased and their inadequate compensation not raised accordingly. I take great pride in keeping my promise, even if it hurts me, and in reference to this claim I assure you that it is far more just than any claim that has been presented here. The clerk of the Assembly, who does no more work than the secretary of this Convention, receives thirty-five hundred dollars for a session no longer nor more arduous than ours. The assistant clerk and the journal clerk of the Assembly receive \$2,000 per year, and others in proportion. Compare their work with the work of these gentlemen. If any employe is entitled to additional pay, I claim that we should increase the pay of the secretary and assistant secretaries, in accordance with the action we have taken in reference to minor employes; and I therefore, move you, sir, that this resolution be committed to the committee on contingent expenses with instruction that they report forthwith in favor of its adoption.

Mr. C. B. McLaughlin—Mr. President, I move to lay that resolution on the table.

The President put the question on the motion of Mr. McLaughlin, to lay Mr. Steele's motion on the table, and it was determined in the affirmative.

Mr. Root—Mr. President, I offer the following resolution:

The President—The Chair would call the attention of the Convention to the fact that no direction has been given as to the publication of the Constitution.

Mr. Root—I offer the following resolution, and I think that it will be necessary for me to read it, as it is somewhat difficult to follow from the copy:

Resolved. That the Revised Constitution adopted by this Convention be submitted to the people for their adoption or rejection at the general election to be held on the sixth day of November, one thousand eight hundred and ninety-four, in the manner following, that is to say:

The submission shall be in three separate propositions as follows:

First. The proposed Revised Constitution, except the proposed amendments to sections two, three, four and five of article three providing a new legislative apportionment, and except the proposed new section ten of article seven providing for the improvement of canals.

Second. The proposed amendments to sections two, three, four and five of article three, providing a new legislative apportionment.

Third. The proposed new section of article seven providing for the improvement of canals.

There shall be three ballot-boxes at each polling place for the reception of ballots on said propositions.

Two kinds of official ballots shall be provided at public expense at each polling-place, indorsed on the back with the words "Revised Constitution" and in the form prescribed by law.

There shall be printed on the face thereof below the perforated line upon each of one kind of such official ballots the following words, that is to say:

"FOR

the Revised Constitution, except the provisions thereof relating to Legislative Apportionment and Canal Improvement."

There shall be printed on the face thereof below the perforated line upon each of the other kind of such official ballots the following words, that is to say:

"AGAINST

the Revised Constitution, except the provisions thereof relating to Legislative Apportionment and Canal Improvement.

Two kinds of official ballots shall be in like manner provided at each polling-place, indorsed on the back with the words "Constitutional Amendment, Legislative Apportionment" and in the form prescribed by law.

There shall be printed on the face thereof below the perforated line upon each of one kind of such official ballots the following words, that is to say:

"FOR

sections two, three, four and five of article three of the Revised Constitution, relating to Legislative Apportionment."

There shall be printed on the face thereof below the perforated line upon each of the other kinds of such official ballots the following words, that is to say:

"AGAINST.

sections two, three, four and five of article three of the Revised Constitution, relating to Legislative Apportionment."

Two kinds of official ballots shall be in like manner provided at each balloting place, indorsed on the back with the words "Constitutional Amendment, Canal Improvement," and in the form prescribed by law.

There shall be printed on the face thereof below the perforated line upon each of one kind of such official ballots the following words, that is to say:

"FOR

section ten of article seven of the Revised Constitution, relating to the Improvement of Canals."

There shall be printed on the face thereof below the perforated line upon each of the other kinds of such official ballots the following words, that is to say:

"AGAINST.

section ten of article seven of the Revised Constitution, relating to the Improvement of the Canals."

If a majority of the votes cast indorsed "Revised Constitution" shall contain on the inside the words "For the Revised Constitution, except the provisions thereof relating to Legislative Apportionment, and Canal Improvement," then the proposed Revised Constitution shall be the Constitution of the State of New York, except as the same may be modified by the result of the vote upon the second and third propositions, above specified.

If a majority of the votes cast so indorsed shall contain on the inside the words "Against the Revised Constitution, except the provisions thereof relating to Legislative Apportionment and Canal Improvement," then the proposed Revised Constitution shall be declared rejected and the present Constitution shall remain in force, except as the same may be modified by the result of the vote on the second and third propositions, above specified.

If a majority of the votes cast indorsed "Constitutional Amendment

Legislative Apportionment" shall contain on the inside the words "For sections, two, three, four and five of article three of the Revised Constitution relating to Legislative Apportionment," then the amended section therein described shall be sections, two three, four and five, of article three of the Constitution. If a majority of the votes cast, so indorsed, shall contain on the inside the words "Against sections two, three, four, and five of article three of the Revised Constitution relating to Legislative Apportionment," the said amendment shall be declared rejected and sections two, three, four and five of article three of the present Constitution shall remain in force and effect. If a majority of the votes cast indorsed "Constitutional Amendment, Canal Improvement," shall contain on the inside the words "For section ten of article seven of the Revised Constitution relating to the Improvement of the Canals," then the said proposed amendment shall be section ten of article seven of the Revised Constitution or section fifteen of article seven of the existing Constitution, as the case may be.

If a majority of the votes cast indorsed "Constitutional Amendment, Canal Improvement," shall contain on the inside the words "Against section ten of article seven of the Revised Constitution relating to the Improvement of the Canals," then the said proposed amendment shall be declared rejected. It shall be the duty of the Secretary of State as soon as practicable after the delivery to him of the Revised Constitution adopted by the Convention and of a duly authenticated copy of this resolution, to transmit to the county clerk of each county a notice under his hand and official seal, setting forth a copy of the said Revised Constitution together with a copy of this resolution and the forms of the ballots herein prescribed, and stating that the said Revised Constitution and the amendments therein provided, will be submitted to the people for their adoption or rejection on the day heretofore fixed as the day of the general election in November, one thousand eight hundred and ninety-four, in accordance with the provisions of this resolution.

It shall be the duty of the Secretary of State to cause the said proposed Revised Constitution, together with a copy of this resolution, to be published in accordance with the provisions of section seven of chapter six hundred and eighty of the Laws of one thousand eight hundred and ninety-two, together with a brief statement of the law and proceedings authorizing such submission, the fact that such submission will be made and the forms of the ballots

to be voted thereon as herein prescribed. The first publication in each newspaper shall be made as soon as practicable, and such publication shall continue once in each week to the time of the election.

It shall be the duty of each county clerk upon the receipt of the notice from the Secretary of State, to file and record it in his office, and in all respects proceed thereon pursuant to chapter six hundred and eighty of the Laws of one thousand eight hundred and ninety-two, so far as the same is applicable.

But no failure of such publication, filing or recording, shall invalidate or affect the submission of the said propositions to the people as hereinbefore prescribed or the result of their action thereon.

The President—The question will be on the resolution offered by Mr. Root.

Mr. Kerwin—Mr. President, I offer the following amendment:

That two kinds of like ballots shall be provided at the polling places endorsed on the back thereof "Prison Labor." On one of said ballots below the perforated line on the inside thereof shall be printed the words

"FOR

The abolition of prison competitive labor."

On the other of said ballots shall be printed below the perforated line on the face thereof the word

"AGAINST

The abolition of prison competitive labor."

Mr. Kerwin—Mr. President, you have separated the apportionment and you have separated the canal question. I suppose the canal question is separated in order to allow a popular measure to get before the people independent of any other action of this Convention. I ask the same help in favor of the prison labor amendment. Within the past week I have received telegrams and letters from all sections of the State requesting that this Convention send out this amendment separate from all other amendments. I have received telegrams and letters endorsed by over 3,000 people. Also endorsed by the leading manufacturing firms in the city of New York, Brooklyn, Buffalo, Rochester, Amsterdam and Schenectady, all desiring that the people have a chance to vote upon this amendment separately and distinctly. I hope Mr. Root will accept this in his original resolution.

Mr. Root—Mr. President, it would give me great pleasure so far as I am concerned, to accept the suggestion of the gentleman from Albany. It would give me great pleasure also to accept the suggestions of many other delegates who are particularly in-

interested in special measures which have been adopted by this Convention; but unfortunately, sir, we are placed in such a situation by the present condition of the law and by the business which must come before the people at the next election that it is wholly impossible to do what we would like to do in respect to this submission. I should like, sir, to see every amendment which has been adopted by this Convention put before the people so that they could express their wishes in regard to that upon its own merits, by itself. But under the existing provisions of law, sir, that would require thirty-three separate propositions and that means sixty-six separate ballots, in addition to those already to be voted on in the hands of every elector. As it stands now, sir, assuming that there will be five State tickets to be printed and furnished to the voters, there will be throughout the State five ballots; there are two constitutional amendments proposed by the Legislature on which there will have to be four ballots, making nine ballots throughout the State to be received, examined, voted and handed back to the election officers by each voter, leaving out our work altogether. I say nine ballots throughout the State. In the city of Brooklyn there are to be three more, because there they are to vote upon the question of greater New York, making eleven ballots in the city of Brooklyn. In the city of New York there are to be two more, because they are to vote there not only upon the question of greater New York, but also upon the question of rapid transit. So that every voter in the city of New York, without reference to our work will have to receive thirteen of these ballots from which he must make a selection, all of which he must fold up and get back properly into the hands of the election officers.

Now, we have gone so far as to require that three more propositions shall be submitted. To carry it any further, Mr. President, would be to break down the whole system. It is wholly impracticable. I regret it. I think the Convention generally will regret it. I have been trying my very best, Mr. President, to find some way under the law by which we can submit these matters as they were submitted in 1884, upon a blanket ballot, so that all of these propositions can be enumerated, and the voters can indicate which they prefer, but the clear practice of the ballot act of 1892, and the conditions imposed upon this Convention by the act of 1893, are expressly and clearly opposed to any such course. If we take that course then, we would be obliged to take it in de-

fiance of the act of the Legislature, and subject our action to all the possibilities of its being a miscarriage, because we have misjudged our power, and because the courts ultimately might declare that the Legislature had the authority to regulate the method of submission, and we are not competent to overrule them. Many gentlemen have been consulted in reference to that subject, and the general consensus of opinion is that we have no right to invite our whole action being void. We are, therefore, left in the situation where we must go so far as we can, but where we must stop when we have reached the point beyond which we cannot go without breaking down the whole election machinery at the coming election. For those reasons I must decline to accept Mr. Kerwin's amendment.

Mr. Peabody—Mr. President, as a farmer, as one of the representatives of the laboring people of this State, at their request, and sent to this Convention in their interest, I heartily second the resolution offered by my friend, Mr. Kerwin, and trust it will be adopted, and upon that I call for the ayes and noes.

Mr. Nicoll—Mr. President, I appreciate the objections urged by the gentleman from New York, Mr. Root, the multiplication of ballots at the polls. But the scheme as proposed by him, provides, as I understand it, for six ballots now, three for and three against, on the several propositions or groups of propositions which are to be submitted. Now, that scheme as it has been adopted, recognizes certain important considerations; that is, it provides for a separate submission of those subjects upon which there appears to have been the greatest division of opinion in this Convention perhaps and in the State. One provides for a separate submission of the political proposition of this Convention. Another provides for the separate submission of the subject of canal improvement, amendments to the Constitution concerning which have always been submitted to the people, as it provides for the expenditure of a very large amount of money, and that entitles it to a separate submission. But there is one other question in which thousands and hundreds of thousands of persons in this State, of a class of persons in this State, are desperately concerned, and that is the question with regard to competition between prison labor and free labor. Now, I voted against that proposition and I do not believe in it; that is, I do not believe in constitution-

allizing it; but at the same time we have here, clamoring at the doors of this Convention, the representatives of the great labor organizations in the State, and all they ask is that the one proposition of theirs, which this Convention has entertained, should receive a separate submission. If you had given any heed, if you had treated their other propositions with anything but contempt, if you had done anything but evade their consideration in this Convention, why perhaps their position might have been different. But it is known to all men that every proposition of the labor organization has been contemptuously rejected and voted down in this Convention. And if needs be, there is a statement circulated that they were so treated, after they had received a promise that they would receive honorable treatment at our hands.

Mr. Root—Did not the gentleman himself vote not to consider any of those propositions?

Mr. Nicoll—I do not think so. If I did so, I did it at your request. I repent it. I did it at your request. At all events, if I have been lead away by the leader of the majority upon one occasion, I am on the right path now, and I want to say that this being the only proposition these labor organizations have received out of the deliberations of this Convention, considering the difference of opinion, the large number of persons that are involved, it seems to me but fairness and justice to give them a separate submission. Now what is the difference between six and eight ballots. That is the only question involved. Shall we have two more ballots, by which they shall have an opportunity of expressing their preference for their amendment without having it linked to the other popular or unpopular propositions contained in the general Constitution. I know that they are deeply interested in this matter; I know that labor organizations throughout the State have applied to the leaders of the majority of this Convention and asked for a separate submission, and I was surprised when you undertook any division whatever that you did not give heed to their request, after your extravagant professions on the floor of this Convention that you were so much interested in the cause of the laboring man and after your advocacy, for no other purpose than that of catching votes, of their prison labor amendment, and after you have done it, you wont give them an opportunity for a separate submission, although their representatives on this floor and the representatives of their organizations are clamoring for it. At the suggestion of Mr. McClure I would say that the amendment was carried by Democratic votes, and they asked this last boon of

this reckless majority, to give the laboring men of this State the opportunity they desire of voting separately upon the one single proposition of theirs to which you have given any respectful consideration.

Mr. Becker—Mr. President, I rise to deny the statement made by the gentleman from New York, that this is the only single proposition which the so-called laboring classes of the State have demanded or asked for at the hands of this Convention and which has been granted. They asked that the statutory limitation in cases of deaths arising from accident should be abolished, and that was granted to them, and their other requests which relate to the matter of conspiracy law, and the matter of the regulation of the liability for injury in the case of the negligence of co-employees are matters which even their own representatives, when here before the committees, said were properly subjects for legislation, although they desired, of course, that there should be an absolute provision made in reference to it in the Constitution itself. It was pointed out to them at that time that those propositions, once put into the Constitution, could never be changed, and the question was asked of several of them, when they were then and there present, if it was satisfactory to them to leave it to the Legislature to be acted upon. I am, and profess to be as good a friend of the laboring man as there is on this floor, but I do not believe that it would be wise to separate this from the other amendments. The natural effect of this amendment will be to prevent labor in the prisons to a very considerable extent, except the employment of them upon public works, such as making good roads, etc., and the making of goods for use in State institutions. Now, we have another matter in the Constitution with which this matter is grouped, providing for the appointment of a prison board to conduct our prison system and not leave it to the mercy of irresponsible politicians. I think those two propositions should go together. If one is submitted, the other should be submitted. For these reasons I hope that the amendment will not be adopted.

Mr. Blake—Mr. President, although numbered with the minority, sir, I do not forget that I am a member of this Constitutional Convention. It is a proud distinction, in my judgment, under any circumstances, and, therefore, sir, I am necessarily desirous that our long and patriotic labor may bear fruit with some portion of our work; may live to commemorate the existence of this constitutional body. I am not so much

of a partisan that I desire to see the work of this Convention utterly fail. I think there is something better than partisanship, and that is good citizenship and patriotism. I wish that every man in this Convention might lift himself up to that height that he might be able to sink the party man in the patriot. Some things have been done in this Convention that do not meet the approval of my judgment, some things have also been done that commend themselves to me and my judgment. I know that we are human, and that parties are but human. I know that we have been sometimes stirred by motives and interests that could not commend themselves to the approval of the minority in this Convention. It may be said in reply that if the minority possessed the power they would not, perhaps, be able to lift themselves up to the loftier plane. I do not know, sir. I hope not, sir. I know parties are very much alike. They will sometimes abuse their power. But, sir, it is the minority that always suffers injustice in these cases. Now, we are creating organic law; not the law of a party; not the law of the Democratic party nor the law of the Republican party, but the law for all the people of this State; the law that will exist for years, perhaps for centuries; law that will constitute the grounds upon which will rest in part the free institutions of our State and the powers and duties and rights of our public officials; the checks and balances of government; the rights and liberties of the people. Then, gentlemen, how momentous the task, how sublime the thought and how great the achievement. I am grateful myself to the majority that they have brought to this last act in the drama we are playing here, something of thought and inspiration of good citizenship and patriotism. But I do not think they have lifted themselves up to the best and truest ambition. It is said that it is the "end that crowns the work." Let us take the lesson to heart. If we have lowered the standard at any time in the session, if animated by motives we have voted for measures that have advanced party interest, let us vote upon this matter offered by Mr. Kerwin from patriotic motives. Let us think that we are doing for the people. I may ask the gentlemen on the other side, what have you done for the people? I want to put one or two inquiries to you in respect to this amendment. You have taken the pains, gentlemen of the majority, to see to it that the conspiracy act could not be reached in this Convention; that the arbitration act could

not be reached you have killed the anti-trust act of Mr. Burr; and though you had the majority here, an overwhelming majority, you never would have carried this measure through the Convention if the Democratic members had not stood with those of your side who voted for this prison measure. It only received, I believe, something like ninety votes. I do not know or recollect the exact number of Democratic votes it received. I am informed that it received thirty, thirty odd, so that this measure could never have been carried through this Convention but for Democratic assistance. Now, gentlemen, you have known full well that the people would not support your work and, therefore, you have separated the canal amendment and the apportionment from the rest of your work. Why have you submitted the canal amendment separately? Why should that be thus distinguished? And yet you refuse to do this much for the working people of the State of New York, the labor organizations of the State of New York who have been clamoring for years for some relief, and yet you have other amendments that bear upon their interests that you hide behind this prison amendment so that this measure in the interests of the workingmen will go down to destruction. Suppose there are six ballots and six boxes, cannot we very well have two more? The workingmen are perfectly well satisfied to take the trouble to hand in two more ballots. Why have you substituted the canal for the labor amendment.

Now, Mr. President, I do not wish to occupy too much time at this stage of the proceedings. I assure the gentlemen of the majority that I am sincerely in favor of adopting the splendid work of this Convention. After all, it is splendid; splendid in its origin and in its intents. I sincerely hope that this work will continue on as an imperishable monument of us when our names and our memories have perished from the earth. I ask you, gentlemen of the majority, for the sake of the working people of the State, the labor unions of the State, do that at least for the people. Do not hide behind the pitiable plea that it makes two more ballots and two more boxes. At least give the workingmen of this State that privilege and that prerogative, and if you do that I will cheerfully vote for this proposition and this resolution and every portion of it.

Mr. McDonough—Mr. President, when a gentleman who worked as hard as he could work against this proposition when he induced all of his party that he could induce to vote against it, stands up here to-day and professes

to be friendly to it, I distrust him. (Applause.) The two leaders of the Democratic side, one leading one wing, and the other another wing, both opposed this measure, and I am told entered into a combination to beat it, and now to-day, two weeks after it has passed, they propose to support it. They are not honest in this matter. If they are honestly in favor of it, they would have supported it on the day it was here and the day it needed votes. (Applause.) Who ran away. Who had Mr. Kerwin in mind when he got up and said: "Mr. President, I move a call of the house?" Gentlemen on this side, gentlemen who should have been the first to stand here and support this measure; gentlemen who have professed all their lives to be the friends of the working people; and the first time they had an opportunity to do them a real service they ran away from it. On the first call, after they found that Mr. Root was in favor of it, after they found the measure was going through, they came here and voted for it.

Mr. Blake—Does not the gentleman know that I was the fifty-ninth man who voted for that measure?

Mr. McDonough—The gentleman voted for it. He deserves great credit. He did not follow his party into the smoking room. I understand the object of the gentleman from New York (Mr. Nicoll). He wants to beat it. He cannot make me believe he is in favor of it to-day, when he was against it two weeks ago. He wants to vote for the gambling act. He wants to save that; but he don't want to vote for this. I move the previous question.

Mr. McClure—Does that apply to the whole resolution, or to the amendment?

The President—The Chair is of the opinion that the previous question carries the whole matter.

Mr. McClure—I want to ask—

Cries of "No!" "no!"

Mr. McClure—I want to ask, not in reference to this matter, not in reference to this convict matter. You will allow a suggestion?

Cries of "No!" "no!"

Mr. McClure—Cannot you allow a suggestion, are you so narrow as that?

Mr. Putnam—I move that the gentleman from New York be permitted to offer a suggestion.

The President—The question is, shall the main question now be put. Mr. Acker and Mr. Burr will act as tellers.

The gentlemen named acted as tellers, and announced the vote as 63 ayes and 49 noes. The previous question was ordered.

Mr. McDonough—Mr. President, I did not understand the effect of the previous question. I meant it simply on the canal amendment.

The President—Unfortunately it carries the whole matter.

Mr. Root—Mr. President, I rise to a point of order.

The President—Mr. Root will state his point of order.

Mr. Root—My point of order is that when the call for the previous question is expressly limited to the particular motion, that limitation is effective, and Mr. McDonough's call for the previous question was on the amendment.

The President—The point of order is not well taken.

Mr. Root—Mr. President, I do not wish that any gentleman who has a suggestion to make about the merits of this resolution, a matter of so grave importance in this Convention, should be cut off merely because some gentlemen wish to make buncombe and disingenuous speeches about one amendment in it. I move to reconsider the vote by which the previous question was ordered.

Mr. Alvord—Mr. President, I trust that the proposition of the gentleman from New York (Mr. Root) will prevail. We are now about at the end of the session. The gentleman from New York, Mr. McClure, asked the privilege of this Convention, not to make a speech, but simply to make a suggestion. In all honesty and in all courtesy, and in all the right of the question, I hope and trust that this motion for the previous question will be reconsidered.

The President—The Chair will call attention to the fact that the resolution offered by Mr. Root is in the nature of a statute, with all the solemnity of a statute, and it ought to be carefully considered before being passed. The question is on Mr. Root's motion to reconsider the ordering of the previous question.

The President put the question on the motion to reconsider the vote by which the previous question was ordered, and it was determined in the affirmative.

The President put the question shall the main question now be put, and it was determined in the negative.

Mr. Kerwin—Mr. President, I have sat here and listened to my colleague from Albany (Mr. McDonough) make his statements in reference to the leaders of the minority of this Convention, who to-day are in favor of the separation of this amendment from the other

amendments, and attack them for voting against that measure, and attacking them upon the ground that he is suspicious of their action. Mr. President, I wish to state upon this floor now that the moment this measure was passed every man who voted in favor of the amendment will fight just as hard for its separation from all other amendments. We were told that we could get it out separately; that every endeavor possible would be used to separate our labor amendment from all the other amendments. I never quit working on that line. Separate that prison labor amendment from all other amendments and we will surely win, Mr. President. I have met a good many Republicans and Democrats and I have been told that the prison labor amendment would lose for the Republican party the country vote. That is what I have been told by the leaders of the Republican party. They tell me that the apportionment will be beaten by it. Now, if the Republican party has got any measure they wish to hold the country vote for, we do not wish to interfere with it in any shape or manner, Mr. President, not alone that, but on the first Saturday that we adjourned over the Republican convention, when the representatives of the Republican majority took this floor and offered the resolution to adjourn over the Convention, I arose in my place and put to the Republican leader of the Convention the question: "When you come back from the Convention will you take up our anti-conspiracy amendment? Will you take up the employers' liability amendment? Will you take up Mr. Burr's anti-trust amendment? And I was told across the floor, and it is on the records of this Convention: "Yes, we will stay here and finish the business of the Convention." What way do you propose to finish the business; shutting off debate on the only question the people are interested in? Mr. Hedges when he offered that resolution I supposed spoke for the Republican caucus, when he told me we were coming here and finish up the business. I desire to say on behalf of the minority who voted for the separation of this measure to-day, that they did it as an act of courtesy to me, and they are doing it honestly and courageously, and on behalf of the organized working people of the State I return thanks to them for the same.

Mr. McClure—Mr. President, I do not desire to say anything on this prison labor matter, but as the vote will probably be taken on the main resolution by Mr. Root, I desire to suggest as worthy of consideration, that whether the only amendment that was considered of sufficient importance here

in the last days of the Convention to warrant the appointment of a special committee to consider it, that received the unanimous vote of this house (at least there were but one or two votes against it, and but one or two members present who did not vote), I rise to ask whether an amendment like that which has no political significance whatever, of the desirability of which there is no question either by the people or by the press, whether it being devoid of any political tone or touch about it, should not be submitted separately to the people. There is not another matter that has been passed here that was not in some way opposed and passed by a divided vote of this body. I think this Convention will not be true to itself if it places the forestry matter in danger of defeat by reason of its being tacked on with other matters that are objectionable. This convict labor matter I am told, will be opposed because the people do not want to be taxed to keep them in idleness. There is a large expenditure of money, perhaps a half million of dollars every year additional to the amount necessary to be expended now, which will be the result of the going into effect of the amendments which are to be bunched together. That fact will induce opposition. I do not think, Mr. President, that having been by the favor of the President of this Convention placed at the head of a special committee of the importance of the one I refer to, having had the united support of this body, I do not think I would be doing justice to the great subject which was embraced in the action of the committee, I do not think I would be doing justice to the people of the State. If I did not call the attention of the majority of the Convention to the fact that at least two ballots more should be given to the people in the presenting of the question to them for their suffrage. I do not take the opportunity to offer an amendment, but I think I have performed my duty when I have called attention to the subject.

Mr. Jenks—Mr. President, if I understood the leader of the majority correctly, his objection to the proposition to the gentleman from Albany was wholly based upon the fact that the separation of the article touching prison labor from the Constitution made a multiplicity of ballots. That is, the average voter who came to the ballot box found himself confronted by such a number of different ballots as to lead to confusion and not distinction. These being the sole grounds urged by the leader of the majority, without discussing the measure present, I make the following motion: I move to

amend the article or statute reported by Mr. Root, of New York, by striking out the word "canals" wherever those words appear and inserting in place thereof "the abolition of prison competitive labor." In other words, this overcomes the sole objection made by Mr. Root in his public utterance. It sends back to the Constitution and the other amendments thereof this provision touching the canals of the State, and presents clear, clean, separate and distinct the question of prison labor. The only objection being multiplicity of ballots, the objection is overcome and the happy family can continue.

The President—Mr. Jenks' amendment cannot be put until Mr. Kerwin's amendment is disposed of.

Mr. E. R. Brown—Mr. President, I move the previous question on the whole matter.

The President put the question, shall the main question now be put, and it was determined in the affirmative.

The President—The question now is on the amendment of Mr. Kerwin.

Mr. Peabody—Mr. President, I call for the ayes and noes on this question.

Mr. Acker—You cannot call for the ayes and noes now. The rules have been changed.

The President—The Chair thinks he can.

The call for the ayes and noes was sustained.

The secretary called the roll and Mr. Kerwin's amendment was lost by the following vote:

Ayes—Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, jr.; Coleman, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, J. I.; Hecker, Herzberg, A.; Holcomb, Hottenroth, Jenks, Kerwin, Mantanye, McArthur, McClure, Mulqueen, Nicoll, De L.; Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Porter, Roche, Rogers, Sandford, Speer, Springweiler, Titus, Tucker, Turner, Veeder, Williams—47.

Noes—Messrs. Abbott, Acker, Ackery, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A.; Brown, E. R.; Cady, Carter, Church, Clark, G. W.; Clark, H. A.; Cookinham, Cornwell, Countryman, Davies, J. C.; Davis, G. A.; Dean, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Fuller, C. A.; Fuller, O. A.; Galinger, Gilbert, Goodelle, Hamlin, Hawley, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam.; Johnson, J.;

Johnston, R. M.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lincoln, Lyon, Manley, Marshall, McDonough, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Mereness, Moore, Nichols, W. H.; Nostrand, O'Brien, Parker, Parkhurst, Pool, Powell, Putnam, Root, Spencer, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Vedder, Vogt, Wellington, Whitmyer, Woodward, President—83.

The President—The question now is on Mr. Jenks' amendment to Mr. Root's resolution, to substitute the word "labor" for the word "canal" so as to secure the separate submission of the prison labor amendment, and the submission of the canal amendment in bulk with the rest.

Mr. Holcombe—Ayes and noes on that, Mr. President.

Mr. Storm—Mr. President, I, for one, have come to the end of buncombe. I am disgusted with the performances of the gentlemen on the other side.

Mr. Veeder—I think the dose is a little bitter for them. It is not very palatable.

The call for the ayes and noes was sustained.

The secretary called the roll, and the amendment of Mr. Jenks was lost by the following vote:

Ayes—Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, jr., Countryman, Danforth, Davenport, Deady, Deyo, Durnin, Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, J. I.; Hecker, Herzberg, A.; Holcomb, Hottenroth, Jenks, Kerwin, Mantanye, McArthur, McClure, Mulqueen, Nicoll, De L.; Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Roche, Rogers, Sandford, Speer, Titus, Tucker, Veeder, Williams—45.

Noes—Messrs. Abbott, Acker, Ackery, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A.; Brown, E. R.; Cady, Carter, Church, Clark, G. W.; Clark, H. A.; Coleman, Cookinham, Cornwell, Davies, J. C.; Davis, G. A.; Dean, Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew; Frank, Augustus; Fraser, Fuller, C. A.; Fuller, O. A.; Galinger, Goodelle, Hamlin, Hawley, Hedges, Hill, Holls, Jacobs, Johnson, I. Sam.; Johnson, J.; Johnston, R. M.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lincoln, Lyon, Manley, Marshall, Maybee, McDonough, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Mereness, Moore, Nichols, W. H.; O'Brien, Parker, Parkhurst, Pool, Porter, Powell, Putnam, Root, Spencer, Springweller, Steele, A. B.; Steele, W. H.; Storm, Tibbetts, Turner,

Vedder, Vogt, Wellington, Whitmyer, Woodward, President—85.

The President—The question is now on the resolution of Mr. Root.

Mr. Holcombe—I demand the ayes and noes on the main proposition.

The call for the ayes and noes was sustained.

The secretary called the roll and the resolution of Mr. Root was adopted by the following vote:

Ayes—Messrs. Abbott, Acker, Ack-erly, Alvord, Arnold, Baker, Barhite, Barnum, Barrow, Becker, Brown, E. A.; Brown, E. R.; Cady, Carter, Church, Clark, G. W.; Clark, H. A.; Coleman, Cookinham, Cornwell, Countryman, Davies, J. C.; Davis, G. A.; Deterling, Dickey, Durfee, Faber, Floyd, Foote, Francis, Frank, Andrew; Frank, Augustus; Fuller, C. A.; Fuller, O. A.; Galinger, Goodelle, Hamlin, Hawley, Hecker, Hedges, Hill, Holls, Jenks, Johnson, I. Sam; Johnson, J.; Johnston, R. M.; Kellogg, Kinkel, Lauterbach, Lester, Lewis, C. H.; Lincoln, Manley, Marshall, Maybee, McDonough, McIntyre, McKinstry, McLaughlin, C. B.; McMillan, Mereness, Moore, Nichols, W. H.; Nicoll, De L.; Nostrand, O'Brien, Parker, Parkhurst, Phipps, Pool, Porter, Powell, Putnam, Roche, Root, Spencer, Springweiller, Steele, A. B.; Steele, W. H.; Storm, Sullivan, T. A.; Tibbetts, Turner, Vedder, Vogt, Wellington, Whitmyer, Woodward, President—89.

Noes—Messrs. Banks, Blake, Bowers, Burr, Campbell, Chipp, jr., Danforth, Davenport, Deady, Dean, Deyo, Dur-nin, Emmet, Forbes, Gibney, Giegerich, Gilleran, Goeller, Green, J. I.; Griswold, Herzberg, A.; Holcomb, Hottenroth, Kerwin, McArthur, McClure, Mulqueen, Ohmeis, Osborn, Parmenter, Peabody, Peck, Platzek, Rogers, Sandford, Smith, Speer, Titus, Tucker, Veeder, Williams. Speer, Titus, Tucker, Veeder, Williams—41.

Mr. Root—Mr. President, I desire to offer a supplementary resolution.

The President—The secretary will read the resolution.

The secretary read the resolution as follows:

Resolved, That the president and secretary of the Convention are hereby directed to certify and deliver to the Secretary of State, and cause to be filed and recorded in his office, a copy of the foregoing resolution.

The President—Does Mr. Root understand that that must be done before the final adjournment of the Convention? In the opinion of the Chair, after the adjournment of the Convention there will be no such officers.

Mr. Root—Yes, sir, before the final adjournment of the Convention.

The President put the question on the adoption of the resolution and it was determined in the affirmative.

Mr. E. R. Brown—Mr. President, I desire to call up for consideration the resolution offered by me relating to Joseph Fayel.

Mr. Becker—Will Mr. Brown withdraw, so that I can offer a resolution in line with the resolution of Mr. Root.

Mr. Brown—I will yield to Mr. Becker.

Mr. Becker—Will the secretary read my resolution in reference to printing.

The President—The secretary will read Mr. Becker's resolution.

The secretary read the resolution as follows:

Resolved, That the Secretary of State be and he hereby is requested to cause the revision and amendments proposed by this Convention to be printed and published as required by law and the resolution introduced this day, and adopted, in such form and type that the proposed new constitutional provisions shall be distinguishable from the provisions of the present constitution proposed to be revised or amended.

Mr. Root—Was the word "requested?"

The secretary—"Be requested," yes, sir.

Mr. Becker—Mr. President, the document prepared by the committee on revision is all in one solid type of one kind and character. There is nothing to distinguish the present Constitution from the proposed revision and amendments. It seems to me very important that when the matter is published, at least in the newspapers, that it shall be published in such form that the people may understand what are the existing provisions of the Constitution and what are the amendments. For that reason I offer the resolution. It is not drawn so as to be mandatory, but so as to be permissive.

The President put the question on Mr. Becker's resolution, and it was determined in the affirmative.

Mr. E. R. Brown—Mr. President, I would like to call up now the resolution relating to the pay of Joseph Fayel, a messenger.

The President—The secretary will read the report of the committee on contingent expenses.

The secretary read such report, as follows:

The committee on contingent expenses, to which was referred the annexed resolution providing for the payment to Joseph Fayel of the sum of six dollars per day during the session on account of services performed by him in the document room, would respectfully report that said Joseph Fayel was appointed a messenger of the Convention, and as such became entitled to three dollars per day for his services; that he was thereafter assigned to assist in the work of the document room in accordance with the provisions of rule 72, authorizing the President of the Convention to detail messengers to render such assistance as might be necessary. The committee on contingent expenses is of the opinion that the Convention has not the power to allow the additional compensation asked for, and report adversely upon such application.

GEORGE F. LYON,
Chairman.

Mr. E. R. Brown—Mr. President, this claim is one precisely on the same ground as the other claims that have been before this Convention. It is certainly as meritorious as any of them, and I move to disagree with the report of the committee, and to adopt the resolution.

The President put the question on the motion of Mr. Brown, and it was determined in the affirmative by a rising vote of 55 ayes and 23 noes.

Mr. Barhite—Mr. President, I offer the following resolution.

The President—The secretary will read the resolution.

The secretary read the resolution, as follows:

“Resolved, That the thanks of the Convention are hereby extended to Hon. M. Delehanty, Superintendent of the Capitol, and to the attaches of his department, for his kindness and courtesy towards the Convention and the faithful discharge of the duties assigned them during the sessions of the Convention.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Cookinham—Mr. President, I desire to offer the following report from the committee on address.

The President—The Chair calls attention to the fact that the report is

not signed by Mr. Bigelow, Mr. Jenks, Mr. Maybee or Mr. Osborn. The secretary will read the report.

The secretary read the report of the committee on address, as follows:

IN CONVENTION.

Albany, September , 1894.

The Delegates of the People in Convention assembled to revise and amend the Constitution of the State, present to the People a Revised and Amended Constitution of fifteen articles.

In this instrument we have retained the general frame-work and substance of the existing Constitution, and have sought only to make such modifications as experience has shown to be desirable, without venturing upon undue experiments.

Out of more than four hundred amendments proposed and considered we have adopted thirty-one besides striking out obsolete matter.

The main features are as follows:

1. We renew the recommendation of the Convention of 1867 providing for progress in Agriculture by requiring general laws giving the right of drainage across adjoining lands.

2. We seek to separate the larger cities, municipal elections from State and National elections, to the end that the business affairs of our great municipal corporations may be managed upon their own merits, uncontrolled by National and State politics, and to the end, also, that the great issues of National and State politics may be determined upon their merits, free from the disturbing and often demoralizing effect of local contests. For this purpose it has been necessary by a series of amendments to rearrange the terms of office and times of elections of the Governor, State Officers, Senators and Municipal Officers so that the elections for State Officers will occur in the even-numbered years and the elections for Municipal Officers on the odd-numbered years.

3. We have provided further safeguards against abuses in legislative procedure, by requiring that all bills shall be printed in their final form at least three days before their passage; prohibiting riders on appropriation bills; providing for notice to municipal authorities before special acts relating to the larger cities can take effect; prohibiting the issue of passes by railroad, telegraph and telephone companies to public officers; enlarging the express constitutional powers of the

President of the Senate, and changing the date for the annual meeting of the Legislature from Tuesday to Wednesday, for the better convenience of the members of the Legislature.

4. We have removed the prohibition against the sale of the Onondaga Salt Springs which are a source of annual loss to the State. We have also removed the prohibition against the sale of the Hamburg Canal in Buffalo, which is about one mile in length and which serves no purpose except to breathe pestilence. We have also provided that the public lands in the Forest Preserve shall never be sold or leased and that the timber thereon shall never be cut. This amendment is deemed important as it will preserve the water supply of our principal streams and a health resort for the people of the State.

5. We have removed from the Constitution all mention of the office of Coroner, so that the Legislature may deal freely with that branch of the public service now in such an unsatisfactory condition.

6. The passion for gambling, to which the system of lotteries formerly ministered, has found fresh opportunity under the so-called Ives Pool Bill; and, under color and pretext of betting upon horse races, is working widespread demoralization and ruin among the young and weak throughout the community. We have extended the prohibition against lotteries so as to include all pool-selling, book-making and other forms of gambling.

It is claimed that this provision will array in opposition to the proposed Constitution a great and unscrupulous money power, but we appeal to the virtue and sound judgment of the people to sustain the position which we have taken.

7. We have abolished the statutory provision limiting the right of recovery for injuries causing death to \$5,000. There is little or no attempt to defend the justness of this limitation. There seems no adequate reason for fixing a limit by statute upon damages to be recovered in case of death, while for an injury which does not produce death they are unlimited. The control of courts over excessive verdicts furnishes ample protection in either case.

8. We have sought to throw greater safeguards around the elective franchise by prescribing a period of ninety instead of ten days of citizenship be-

fore that right can be exercised, so that naturalization may be taken out of the hands of campaign committees and removed from the period immediately before election.

We have found that in some cases, upon the eve of an important election, a single judge has naturalized citizens at the rate of more than five hundred a day. Such a procedure, of course, precludes all inquiry into the qualifications of the applicant. It is degrading to citizenship and an injury to every citizen, whether native or foreign born. We think the simple provision which we propose will do much to prevent its recurrence.

We have also included institutions supported by private charity among those whose inmates do not acquire or lose a residence for the purpose of voting.

We have modified the language relating to elections so that if any mechanical device for recording and counting votes is so perfected as to be superior to the present system, the Legislature may make trial of it.

We have established in the Constitution the well-tried and satisfactory system of registration of votes, forbidding, however, any requirement of personal attendance on the first day of registration in the thinly settled regions outside of the cities and large villages, where voters would have long distances to travel to the place of registration. And we have provided for securing an honest and fair election, by requiring that on all election boards election officers shall equally represent the two principal parties of the State.

9. We have provided for a new apportionment of Senate and Assembly districts, and for that purpose have fixed the number of the Senate at fifty and that of the Assembly at 150.

The number of Senators was first fixed at thirty-two in 1801. With this number the Senate districts, as formed under the Constitution of 1846, were of reasonable and convenient size, so that each Senator could come in contact with his constituents and readily represent them. In 1846 the only county in the State which had more than one Senator was New York, which had three.

In 1846 the citizen population of the State was 2,450,778, and in 1892 it was 5,790,865. In 1846 the ratio of population for a Senator was 76,586, and in 1892 it was fixed at 180,899. In 1894 we have fixed the ratio at 115,817.

Since 1846 the great increase of population in the cities, entitling them to additional representation in the Senate, has required a corresponding decrease in the representation of the country districts, so that those districts have been constantly enlarged and their representation in the Senate has been constantly decreased. The object of the proposed increase is to restore the country districts to substantially the same position in which they were in 1846, and to provide for the increased representation of the cities by the increase in number, so that there will be effective representation of the country as well as of the city districts.

The increase of the number of the Assembly was deemed necessary to maintain a due proportion between the members of the two houses, and to permit in the apportionment of members a more reasonable recognition of the great difference in population in the smaller counties of the State. Under the present apportionment, St. Lawrence county, with 80,679 citizen inhabitants, has one member of Assembly, or the same representation accorded to Putnam county, with 13,325 citizen inhabitants. Such wide differences in representation are undesirable and unjust, and have been greatly reduced by the increase from 128 to 150, while the effectiveness of the body has not been impaired.

It is believed that the distribution both of Senators and Assemblymen by this arrangement has been made with absolute fairness. In both cases they are distributed in exact accordance with population, so far as the maintenance of county lines permit, and no change in the distribution has been asked or suggested by any one.

Attack has been made upon two rules laid down in the proposed measure for the guidance of the Legislature in future apportionments. One of these is the rule that no county shall have more than three Senators unless it shall have a full ratio for each Senator, although smaller counties may receive a Senator, or an additional Senator, on a major fraction of a ratio. The reasonableness of this rule is manifest when we consider that in the large counties, which include many Senate districts, the surplus population of all those districts is to be taken together as a whole in determining whether another Senator shall be awarded to that county, while the surplus populations of the smaller counties is not taken together for that pur-

pose, but is considered separately. So that an equal number of Senate districts outside of a great city might have many times a surplus population, which would entitle the city to another Senator and still receive no additional representation.

Even with this limitation, the advantage is still greatly on the side of the city as against the country districts on account of their small territory, and the fact that all their representatives stand for the entire city.

The other rule attacked is that no one county shall have more than one-third of all the Senators and New York and Kings county together shall not have more than one-half of all the Senators.

We submit this to the people of the State without a doubt as to its propriety and fairness, and in confident expectation of their approval.

Before another Constitutional Convention presents its work to the people it is probable that the cities of New York and Brooklyn, or the greater city formed by their union, will contain a majority of the inhabitants of the State. If the present system continues, they will be able to elect the Governor, the State officers, a majority of the Senate and a majority of the Assembly. Both by force of numbers and by the multiplied power of compact organization and cohesion among the representatives from a single county, responsible to a single local political organization, they will be able absolutely to control the government of the State. What will be the consequence of compelling the vast region extending from the city of New York to St. Lawrence and to Lake Erie, with its varied interests, sentiments and opinions, not over well understood by the inhabitants of the city, to submit to such a domination? Would such an arrangement conduce to the permanent welfare of the State? Our opinion is that it would not; and that the provision which secures to the whole State outside of the city a bare half of one house of the Legislature, leaving to the city such control as its members may give over the other house and over the executive department, is a slender enough safeguard against so unfortunate a result.

We believe the provision to be sound in principle, that somewhere in every representative government there should be a recognition of variety, of interest and extent of territory as well as of

mere numbers united in interest and location.

Such a departure from the rule of strict numerical representation is recognized by the Constitution of the United States in the organization of the Senate, by the Constitution of the State of Pennsylvania in limiting the representation which the city of Philadelphia may have in its Senate to one-sixth of its members, and by the Constitution of the State of Maryland in limiting the representation which the city of Baltimore may have.

Similar provisions have been adopted by the State of Ohio affecting Cincinnati and Cleveland, the State of Missouri affecting St. Louis, the State of Rhode Island affecting Providence, and by other States of the Union having large cities. It is the rule, rather than the exception, throughout the Union.

10. We have declared in the Constitution the principle of Civil Service Reform, that appointments and promotions are to be based upon merit, and ascertained, so far as practicable, by competitive examination.

We have sought by this to secure not merely the advantage derived from declaring the principle, but the practical benefit of its extension to the State prisons, canals and other public works of the State to which, under the existing Constitution, the court of last resort has decided that Civil Service rules cannot be applied.

11. In addition to the foregoing provision for the improvement of the State prison administration, we have prohibited the contract system of convict labor. By these two provisions we have adopted, in full, the recommendations of the commissioners of the Prison Association in their report of 1867, and declared a settled policy in accordance with the most enlightened views of our time, with the belief that the application of these provisions will go far to prevent such jobbery and scandals as have affected their administration in the past.

12. We have authorized the Legislature to provide for the improvement of the canals; without, however, borrowing money for that purpose unless the people expressly authorize it pursuant to the provisions of article 7, section 12 of the present Constitution. Unless such authority for borrowing money is given any improvement made must be paid for as it progresses in the same manner as the present expense of maintenance and repair, and

the expenditure will thus remain always under the control of the people.

13. We have required the Legislature to provide for free public schools in which all the children of the State may be educated; and we have prohibited absolutely the use of public money in aid of sectarian schools.

We have provided, also, for regulating and limiting the payment of public money to private institutions for the support of the poor by depriving the Legislature of the power to pass mandatory laws requiring such payments from counties, cities, towns and villages, and by subjecting such expenditures to the control of the State Board of Charities.

14. The revision of the Judiciary Article is designed to remedy existing evils arising from the overcrowding of the trial calendars, especially in the large cities, and of the calendar of the Court of Appeals. It seeks to accomplish the former by consolidating the Superior City Courts with the Supreme Courts, thus securing greater economy of judicial force, and by a moderate increase in the number of justices, not however making the number as great in proportion to the population of the State as it was at the time of the last increase which the people approved in 1882.

We expect to obviate the overcrowding of the Court of Appeals calendar by establishing more effective and satisfactory courts of intermediate appeal and enlarging their power and jurisdiction. In place of the nine General Terms now existing, five in the Supreme Court and four in the Superior City Courts, we provide that the State shall be divided into four departments, and that in each there shall be a tribunal composed of five Justices of the Supreme Court, who shall perform substantially no other duties, and shall be the court of last resort for that department upon all questions of fact and upon all interlocutory proceedings.

The Court of Appeals is limited to its proper function of declaring and settling the law. Believing that under the operation of the proposed appellate Division of the Supreme Court, and with the distribution of duties and jurisdiction above indicated strictly observed, the Court of Appeals will have no difficulty in meeting all demands upon it. We have done away with the make-shift of a second division, and

have prohibited the imposition of a money limit upon the right of appeal to the Court of Appeals.

We have also abrogated the provision for judicial pensions, done away with the justices of sessions, abolished the Court of Sessions and conferred their jurisdiction upon the County Courts; abolished Courts of Oyer and Terminer and Circuit Courts, and conferred their jurisdiction upon the Supreme Court; enlarged and defined the jurisdiction of County Courts, prohibited county judges and surrogates in counties of over 120,000 from practicing law, forbidden the Legislature to further enlarge the jurisdiction of local and inferior courts of its own creation, and in various other ways simplified and strengthened the judiciary system.

The general object of the judiciary article, as proposed, is to secure the more speedy, uniform and effective administration of justice throughout the State.

15. We have so amended the present Constitution as to provide for a naval as well as a land force of militia; that the militia shall not be reduced below 10,000 men, and that the Legislature shall provide for their support.

H. J. COOKINHAM.

ELIHU ROOT.

ELON R. BROWN.

CHESTER B. McLAUGHLIN.

MILO M. ACKER.

DANIEL H. McMILLAN.

M. H. HIRSCHBERG.

JOSEPH H. CHOATE.

Mr. Jenks—Mr. President, I think I state the position of the members of the minority when I say there is no desire on their part, at the present time, to discuss or debate this address. I think I also state their position right when I say that they dissent from much of the statements and from almost all of the conclusions drawn from those statements. But this is not the time and not the occasion to precipitate the hot hectic of debate. It is the purpose of the minority, I think, to register their formal opposition to this address, if it come to a vote in the Convention, and not, as I have said, to debate or discuss it, for the reason that swiftly, in a proper time and in a dignified, serious way, it is the purpose of the minority to address the people of the State as to the work done by this Convention, in order that the people, reading soberly, quietly and thoughtfully, may decide and determine the measures, which, after all, are nothing

more than mere chaff unless they receive the sanction of the popular will at the ballot-box.

Mr. Blake—If it be in order, sir, I move you that the address just read be laid upon the table.

The President—It is in order, of course.

The President put the question on the motion of Mr. Blake, that the address lie on the table, and it was determined in the negative.

The President—The question is on the adoption of the address, and then there will have to be a further question as to how it shall be authenticated for publication.

The President put the question on the adoption of the address, and it was determined in the affirmative.

Mr. Cookinham—I move that it be authenticated by being signed by the President and by the secretary.

Mr. Bowers—What was that; I did not hear the motion?

The President—Mr. Cookinham moves that the address be authenticated by being signed by the President and secretary.

Mr. Bowers—What will be done with it then?

The President—It will go on the wings of the morning to the farthest parts of the State. (Laughter.)

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative.

Mr. Smith—I move that the address be entitled "The address of the majority of the Convention."

The President—The motion is out of order, inasmuch as it has already been adopted as the address of the Convention to the people of the State.

Mr. Lyon—Mr. President, I offer the following resolution.

The President—The secretary will read the resolution.

The secretary read the resolution, as follows:

"Resolved, That the number of copies of the address prepared by the committee of the Convention appointed for that purpose correspond to the number of copies of the proposed Constitution printed."

Mr. Veeder—Mr. President, I rise to a point of order.

The President—Mr. Veeder will state his point of order.

Mr. Veeder—My point of order is that this Convention has no power to spend

the money of the State in printing a stump speech. (Laughter.)

The President—The Chair is of the opinion that the point of order, however well intended, is not well taken.

Mr. Peabody—Mr. President, I move as an amendment that the printing be paid for by the majority members of this Convention.

The President—The Chair is of the opinion that the motion is not in order. The question is on Mr. Lyon's resolution that there be printed an equivalent number of the copies of this address with the copies of the Constitution ordered to be printed.

The President put the question on the adoption of Mr. Lyon's resolution, and it was determined in the affirmative.

Mr. Lester—Mr. President, I desire to offer this resolution:

Resolved, That the sergeant-at-arms remain at Albany for ten days after the final adjournment of the Convention to receive and forward mail matter addressed to the members of the Convention, answer calls for documents and to attend to other matters as may be required by the members of the Convention.

I desire to say that that resolution is similar to one which is invariably adopted by the Legislature at the time of its adjournment, and seems to be a necessity.

Mr. Smith—I move as an amendment that it be made twenty days. The documents will not be printed in ten days.

Mr. Francis—Mr. President, I suggest that that is the postmaster's duty, and not the sergeant-at-arms, and I move as an amendment that the postmaster be requested to remain during the time and attend to this work.

Mr. Lester—Mr. President, I am willing to accept the amendment extending the period to twenty days, if the Convention deem it necessary, and I should think, from the condition of the printing, that it would be necessary.

The President put the question on the motion of Mr. Francis, that the postmaster be the person instead of the sergeant-at-arms to remain in charge of the documents and their distribution for the next twenty days after the adjournment of the Convention, and it was determined in the negative.

The President then put the question on Mr. Lester's resolution, that the sergeant-at-arms remain in custody of the documents and charged with the duty of their distribution for twenty days after the final adjournment of the Convention, and it was determined in the affirmative.

Mr. Root—Mr. President, I offer the following resolution.

The President—The secretary will read the resolution.

The secretary read the resolution, as follows:

Resolved, That the services of the secretary and his assistants, of the janitor and one messenger and one page, to be designated by the secretary, be retained for two weeks after the adjournment of the Convention for the purpose of finishing the work of the Convention under the orders heretofore made.

Mr. Root—Mr. President, the labors already imposed upon the secretary and his assistants, under the orders of the Convention, will fully require that time.

The President put the question on the adoption of Mr. Root's resolution, and it was determined in the affirmative.

Mr. Putnam—Mr. President, I sent a resolution to the desk a few moments ago which I would like to have read.

The President—The secretary will read Mr. Putnam's resolution.

The secretary read Mr. Putnam's resolution as follows:

Resolved, That F. C. Loomis, messenger, be allowed the sum of two dollars per day from May 21, 1894, for extra services performed in the document room since that date, and that the Comptroller be authorized to pay the same upon the certificates of the President.

Mr. Root—Mr. President, I move to lay that on the table.

The President put the question on the motion of Mr. Root to lay Mr. Putnam's resolution on the table, and it was determined in the affirmative.

Mr. Roche—Mr. President, during the past two weeks the revision committee have performed work of the most exacting character. Even when the rest of the Convention had a little rest these gentlemen were compelled to stay here and continue their work night and day. Whatever difference of opinion

there may be as to some of the propositions that go into the Constitution, I believe there can be no difference as to the faithfulness and intelligence with which this committee has prepared this Constitution and the activity and diligence they have shown in performing their work. The revisions which they have had to make, the skill which has been shown in copying this Constitution, the large amount of work done in revising and preparing the proofs of this Constitution, is testimony of the faithfulness with which they have performed their work.

I desire to offer the following resolution.

The President—The secretary will read the resolution.

The secretary read the resolution as follows:

Resolved, That the thanks of this Convention be and they are hereby tendered to the revision committee for their painstaking, exacting and arduous labors in their work in connection with the Constitution.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Vedder—Mr. President, I move that when this Convention adjourns it be until ten o'clock to-morrow. Now, Mr. Chairman, I desire to explain why that seems to be necessary and it is this: The resolutions passed by this Convention this afternoon in regard to the manner in which our work shall be submitted to the people must be engrossed by the committee on revision. It is a very important matter. It must be engrossed very carefully, and the father of that resolution, Mr. Root, will have to examine it very carefully all the while to see that it is exactly right. The committee on revision say that it is absolutely impossible to have that matter engrossed properly before 12 o'clock to-morrow. That is their decision. That being so, I have suggested and moved that we adjourn until 10

o'clock to-morrow morning, because if delegates think there is a little matter of importance between us as men, that ought to be done between the hour of ten and 12 o'clock to-morrow. The gentlemen will all, I think, understand, what matter I refer to. Under these circumstances, I think it proper that we adjourn until to-morrow at ten o'clock, and at that time the hour will be fixed by this committee when the work will be completed, when we can adjourn without date. By this method we can do it in decency and in order, and I can see no other proper way.

The President put the question on the motion of Mr. Vedder, and it was determined in the affirmative.

Mr. Moore—Mr. President, I move that one complete set of the proceedings of this Convention be sent each to the Plattsburgh High School library and to the Y. M. C. A. library at Plattsburgh.

The President put the question on Mr. Moore's motion.

A count was called for.

The President appointed Mr. McDonough and Mr. Smith tellers.

The gentlemen named acted as such and announced the vote as 61 ayes and 20 noes.

The President—The motion prevails.

Mr. Ackerly—Mr. President, I supposed this Convention would adjourn to-day, and I have made an important engagement for to-morrow. I, therefore, ask to be excused from attendance.

The President—Under the orders of the Convention the motion cannot be put.

Mr. Cookinham—Mr. President, I move that we do now adjourn.

The President put the question on the motion of Mr. Cookinham, and it was determined in the affirmative.

Whereupon the Convention adjourned until to-morrow morning at ten o'clock.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 141.

Saturday Morning, Sept. 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly chamber, at the Capitol, Saturday morning, September 29th, 1894, at ten o'clock.

President Choate—The Convention will come to order. I am very happy to state that on this, the last day of our session, the Bishop of Albany has kindly consented to assist us in opening the Convention.

Rt. Rev. Dr. William Croswell Doane offered prayer.

The President—In the opinion of the Chair, the Journal of yesterday should be read through, inasmuch as it contains matters of very great importance. Gentlemen will please give their attention to the reading of the Journal.

The secretary proceeded to read the Journal.

When the secretary reached Mr. Holls' motion in reference to the attestation of the engrossed copy of the Constitution, the President said: Will gentlemen consider whether they are satisfied with that resolution as the orderly form of attestation? The secretary will read Mr. Holls' motion again.

The secretary read Mr. Holls' motion, as follows:

"Mr. Holls moved that the President and secretary attest the engrossed copy of the Constitution as adopted this day in behalf of the Convention."

Mr. Holls—Mr. President, ought there not to be an addition there, to deliver it to the Secretary of State?

The President—That is according to the law.

Mr. Goodelle—I would suggest that it be, in behalf of the delegates.

Mr. Veeder—Oh, no; you can make it a majority of the delegates.

The President—The point is, before approving this resolution, whether the authority given there is ample and sufficient.

Mr. Veeder—May it be read again, Mr. President?

The President—The secretary will read it again.

The secretary read as follows:

"Mr. Holls moved that the President and secretary attest the engrossed copy of the Constitution as adopted this day in behalf of the Convention."

Mr. Holls—Mr. President, I would move to amend that they attest by their signatures.

Mr. Francis—It is my strong impression that that policy was pursued at the close of the Convention of 1867 and 1868.

Mr. Veeder—I think the words "in behalf of the Convention" are a mere technicality, a surplusage. They are wholly unnecessary.

The President—That has already been passed.

Mr. Holls—I would suggest that it would be more formal to say that "the President and secretary be and they hereby are authorized and directed to attest."

The President—These minutes of yesterday, as read, will stand approved

unless objection is made. The Chair is of the opinion that any alteration made to Mr. Holl's motion should be made by a new resolution this morning.

Mr. Holls—Very well, I will offer a new resolution.

Mr. Goodelle offered the following resolution.

Resolved, That the thanks of this Convention are due and hereby tendered to Melvil Dewey, director of the State library, and to his assistants, for their uniform courtesy and kindness to the delegates of the Convention during its session.

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Putnam—Mr. President, yesterday I offered a resolution which, on motion of Mr. Root, was laid upon the table. I ask that that resolution be taken from the table and action taken thereon. All I have to say in connection therewith is that I ask this Convention to be consistent in their action.

The President—Mr. Putnam's resolution will be read by the secretary. While he is looking for it an announcement by the sergeant-at-arms will be read.

The secretary read the following announcement:

Albany, Sept. 29th, 1894.

Hon. Joseph H. Choate, President Constitutional Convention:

In pursuance of a resolution adopted by the Convention September 28th, 1894, J. S. Saunders and George D. Weeks are hereby designated to remain twenty days after the final adjournment of the Convention to perform the duties specified in said resolution.

W. W. BENNET,

Sergeant-at Arms.

The secretary also read the following announcement.

The secretary designates pursuant to the resolution of September 28, Messenger A. D. Taylor and Page J. H. Millard, to remain for two weeks and assist in finishing the work of the Convention.

The President—The secretary will now read Mr. Putnam's resolution.

The secretary read said resolution as follows:

Resolved, That F. C. Loomis, messenger, be allowed the sum of two dollars per day since May 21, 1894, for extra services performed in the document room since that date, and the

Comptroller be authorized to pay the same upon the certificate of the secretary.

Mr. Becker—As I understand it, Mr. Putnam now moves to take that resolution from the table.

The President—Yes, sir; it requires a motion.

The President put the question on the motion to take said resolution from the table, and it was determined in the affirmative.

Mr. Becker—Mr. President, I hope this resolution will prevail. Mr. Loomis is the only one of the messengers who performed extra services who has not received some extra compensation for them. He has performed extra services from the beginning of the Convention in the document room, and I know of my own knowledge that his services there have been very valuable. Many times when I have needed documents for use on the floor of this Convention or otherwise, I have always found Mr. Loomis one of the most courteous attendants there. Besides that he has been messenger of one of the committees. It seems quite invidious that he, being one of the representatives of the labor organization, having been recommended for appointment by the labor organizations of Buffalo, that others should have their pay advance and he not. If any one should have extra pay he should have it. It is only two dollars a day extra, while the others have had three dollars extra given them. I think the resolution should prevail.

The President put the question on the adoption of Mr. Putnam's resolution, and it was determined in the affirmative.

Mr. Holls—Mr. President, I now move to reconsider the resolution offered by me yesterday, with reference to the attestation of the Constitution, for the purpose of offering another resolution more formal.

The President—If we pass this resolution, and it is satisfactory, no matter about the other. Mr. Holls will read his resolution.

"Resolved, That the President and secretary be and they are hereby authorized and directed to attest, by their signatures, the Constitution adopted by this Convention, and deliver the same to the Secretary of State, as required by law."

The President put the question on the adoption of the resolution, and it was determined in the affirmative.

The President—There is one matter which has been brought to my attention by the secretary which requires the action of the Convention. It appears that 30,000 copies of this Constitution have been ordered to be printed. By another resolution members were directed, or permitted, to hand to the secretary a statement of the numbers which they would require. Those aggregate amounts already exceed very considerably the number of copies ordered to be printed. What action will the Convention take on the matter?

Mr. Lyon—Mr. President, I have a resolution on that subject.

The President—The secretary will read the resolution.

The secretary read the resolution, as follows:

"Resolved, That the secretary of this Convention be, and hereby is, directed to have printed such number of copies of the proposed Constitution additional to those already ordered as may be necessary to supply members of the Convention with such number of copies for distribution as may be desired by members, not, however, exceeding in the aggregate 20,000 copies; and in the event of the demand exceeding the number of copies provided for by this and the preceding resolution relating to printing copies of the proposed Constitution for distribution, the secretary is directed to apportion the same among the members requesting copies in such manner as shall be just."

Mr. Becker—Mr. President, I found on consultation with the printer last evening that if the revision committee or secretary will indicate what portion of this revised Constitution is new matter in proper form, that he will be able to print it so that the new parts will be separated from the old parts. For that reason I move that in printing this new Constitution the secretary see to it that the portions of the Constitution which are proposed by this Convention to be amended be distinguished from the Constitution as it now exists.

The President—Do you make any motion to that effect?

Mr. Becker—I do make such a motion.

Mr. Hawley—Mr. President, the gentleman states that the printer says that the new matter can be printed separate. I suppose he does not mean

that. It is to be printed so that the new matter can be distinguished.

Mr. Becker—I said "distinguishable."

Mr. Hawley—You said "separated."

Mr. Becker—I meant "distinguished." I suppose the new matter will be either underscored or italicized.

The President—Will Mr. Hawley and Mr. Becker agree upon the form in which that should be put, so that there will be no misunderstanding?

Mr. Spencer—Mr. President, I move to amend by striking out the words "twenty thousand" and substituting therefor the words "fifty thousand."

The President—Does Mr. Lyon accept that amendment?

Mr. Lyon—Yes, sir.

The President—Mr. Lyon accepts Mr. Spencer's amendment making the number fifty thousand.

Mr. E. R. Brown—Mr. President, unless some provision is made for the delivery of these copies of the Constitution within a reasonable time by our expeditious printer, they will not likely be of very great use to the State. It seems to me that the resolution ought to provide that they be delivered by a certain date. I trust that the mover of the resolution will accept this suggestion and make it conform thereto.

The President—Mr. Brown will confer with Mr. Becker who is preparing a resolution on the subject.

Mr. Vedder—Mr. President, can we do any business while they are fixing this thing up?

The President—I think so.

Mr. Vedder—I would then move to take from the table the resolution offered by Mr. Steele in reference to the compensation of clerks and deputys.

Mr. Spencer—I rise to a point of order, that a motion is now before the house.

The President—It cannot be done except by unanimous consent.

Mr. Spencer—I make that point.

Mr. E. A. Brown—Mr. President, I desire to move that the compensation of Mr. E. W. Parkhill, who has acted as financial secretary of this Convention, be increased to ten dollars per day from the beginning of the Convention. The Convention has voted to his assistant within a dollar a day of what he received. Now, Mr. Parkhill gives a bond of \$25,000 for the faithful

performance of his duty. He has distributed over \$200,000 of the funds of the State, and it seems to me that, as a matter of justice, this Convention ought to vote him an increase in salary. I believe that having gone as far as we have in this matter that we should increase Mr. Parkhill's compensation to the amount asked for. It was never intended, when he was appointed financial secretary, that a bond would be required, and I think, if any gentleman will take the trouble to go to the Comptroller's office, he will be informed there that no financial officer's accounts have been as correct and as satisfactorily rendered to the Comptroller as have been the accounts of Mr. Parkhill. I move that his compensation be increased to ten dollars per day.

Mr. Moore—Mr. President, are remarks in order upon Mr. Brown's motion?

The President—Not until Mr. Lyon's resolution is disposed of. There is an amendment by Mr. Becker pending. The secretary will read Mr. Becker's amendment.

The secretary read said amendment, as follows:

Amended by adding to the end of Mr. Lyon's resolution "and that the secretary cause the proposed amendments and revision to be printed in such manner that the new matter proposed by this Convention shall be distinguishable from the provisions of the present Constitution. The secretary is hereby authorized and directed to notify the printer that this matter is entitled to precedence over all other printing of the Convention, and that it must be completed and delivered on or before October 10, 1894, or it will not be accepted or paid for."

The President—Does Mr. Lyon accept the amendment?

Mr. Lyon—Yes sir.

The President—The secretary will read Mr. Lyon's resolution.

The secretary read said resolution as follows:

"By Mr. Lyon. Resolved, That the secretary of this Convention be and hereby is directed to have printed such number of copies of the proposed constitution additional to those already ordered as may be necessary to supply members of the Convention with such number of copies for distribution as may be desired by members, not, how-

ever, exceeding in the aggregate fifty thousand copies; and in the event of the demand exceeding the number of copies provided for by this and the preceding resolution relating to printing copies of the proposed Constitution for distribution, the secretary is directed to apportion the same among the members requesting copies, in such manner as may be just."

Mr. Spencer—Mr. President, I move further to amend by inserting the words "and address" after the words Constitution where it appears.

Mr. Lyon accepted the amendment.

Mr. Durfee—Mr. President, this resolution contemplates, as I understand it, the printing of the revised Constitution in a manner so that the new matter may be distinguishable from the old?

The President—Yes.

Mr. Durfee—Now, Mr. President, that will undoubtedly involve the resetting of a very considerable part of the revised Constitution, if it is put in italics (and I presume likely it would possibly have to be reset in order to be underscored), calling attention to the new matter. The committee on revision have been over that time and time again, with the utmost pains, to secure as nearly as possible absolute accuracy, and every error that has been detected by the most patient and careful reading has been reported to the printer, and is, as we suppose, finally correct. To impose that labor upon the secretary, as it would impose upon him by this resolution, to incur the risk of error in the printing unless the same care were exercised by the secretary, and to incur the additional expense which will be involved in the carrying out of this proposed resolution, seems to be certainly not expedient. The new matter in this Constitution, while it would be under the eye of those who might read it, after all it would not be intelligent without comparison with the old. It really would be, it seems to me, of very little help to a man who wanted to know what the changes were and what the effect of them would be. That must be through the press, and it has already been done in a great degree, and by the address which has been adopted by this Convention. It seems to me that the address which we have adopted calling attention to the different propositions which we have passed here, supplemented by the com-

ments of the newspapers of this State, will bring our action to the intelligent consideration of the people in a far more satisfactory manner than can be done by the printing proposed by this resolution. I, therefore, Mr. President, if I may be permitted, offer a further amendment, and move to amend by striking out that part of the resolution which requires the revised Constitution to be printed separate from the rest.

The President—The secretary called attention to the fact that the index to document No. 72, as it is already printed, points out exactly where each amendment is.

Mr. Durfee—It does. It has been prepared with great care, so that anybody can take that index, with a copy of the old Constitution, and compare it section by section and ascertain exactly what the changes are. It seems to me that the work and expense contemplated by this resolution are entirely unnecessary.

Mr. Becker—Mr. President, I dislike very much to differ with Mr. Durfee about this matter; but let us look at it a moment and see whether he is right. In his desire to be accurate, it seems to me that he would put us in a position where the people will be able to know little or nothing about what we have done. Now, there are a large number of amendments made to this Constitution. In revising them the committee has printed a document which contains the new matter and old matter in the same kind of type. There is nothing in this document that anybody, I do not care whether he be a lawyer or a layman, he cannot take this document and tell what is new matter or what is old, except by going back to the index and tracing it line by line. Now, who is going to take the trouble to do that? Now, why not have it distinguished here which is the old and which is the new? It may cost a little more. It may take a little more time. I think it will pay in the end. The secretary is here with his assistants under pay, and I take it there will not be very great difficulty in having it printed as called for by the resolution, which is that the new matter can be distinguished from the old matter. The printer informed me that this can be done by underscoring, without resetting the type or italicizing. That is sufficient. All the bills that we have had here have had the amendments underscored. Under the rules the new

matter was required to be underscored. The committee on revision, in its haste to get through, did not report in that form, as they should have as required by the rule. Our rules require that all matter should be underscored, so as to distinguish the old matter from the new. I do not wish to put any additional burden upon the committee, but Mr. Hawley has gone through with it and marked his copy on the margin. It seems to me that it is more important that the people of this State should have something before them that would indicate plainly what is the new and what is the old than that a few dollars expense would be saved.

Mr. Hawley—Mr. President, I think, upon reflection, that the operation of this proposed resolution is, if not impracticable, disastrous. Many of the amendments are the simple dropping out of matter, which cannot be indicated in the manner proposed by the resolution. Many of the amendments are changes of phraseology of one part of a section, so that a word here and there would have to be distinguished, and would form no more sure guide to the reader as to exactly what the change was. We have had this experience: The forms upon which this Constitution is printed have been unlocked repeatedly for the purpose of amendment and correction, and I think in no single instance has that ever been done without somewhere some letter, some word, some part of a line has dropped in the transfer and unlocked all the forms, and some erroneous letter or word or part of a line has been inserted. An example of that appears upon page 62, second line of the paper now before the Convention. It appeared in repeated instances in the first document that we submitted, and there is no assurance that if this experiment be entered upon that we shall submit to the people an absolutely correct copy of the Constitution. That will be no fault of the printer. It is inevitable that those things should happen. Then, further, it will occasion what we must by all means avoid. It will occasion further delay. It will take considerable time to go through this. I do not believe that the thing can be done so that it will be an accurate guide to the reader, and I do not think it can be done without great danger of errors intervening, and I do not think it can be done without the expenditure of a good deal of time, and, therefore, I think that it is better to

rely upon the index, upon the address and upon the observation and examination which the people shall give to the document.

The President—The question is on Mr. Durfee's motion, to strike out those parts in this resolution which requires the printing of the additional copies to be altered so as to make the new parts distinguishable from the old. The secretary will read the part covered by the amendment to strike out.

The secretary read Mr. Durfee's amendment, as follows:

Mr. Durfee moves to strike out "and the secretary cause the proposed amendments and revision to be printed in such manner that the new matter proposed by this Convention shall be distinguishable from the provisions of the old Constitution."

The President put the question on the adoption of Mr. Durfee's amendment, and it was determined in the affirmative.

The President then put the question on Mr. Lyon's resolution, as amended, and it was determined in the affirmative.

The President—The question now is on the adoption of Mr. E. A. Brown's resolution in reference to increasing the pay of the financial secretary. The secretary will read Mr. Brown's resolution.

The secretary read said resolution, as follows:

"Mr. E. A. Brown moved that the compensation of E. W. Parkhill, financial secretary, be increased to ten dollars per day from the date of the beginning of the session."

Mr. Root—Mr. President, I hope that motion will not prevail. It is true that yesterday several motions were adopted by this Convention giving additional compensation to a number of employes upon the ground that, although appointed to minor positions and employed ostensibly in duties of an inferior order, owing to the lack of sufficient assistants of the higher character, they have been transferred and have rendered a different kind of service from that to which they were appointed. It may well be that an exception of that description is well founded, and that the Convention is justified in paying for a different kind of service than that for which the person was appointed. But, sir, the matter which is now presented has no such

characteristic. The gentleman named was appointed to do the very kind of work which he has done. He has done his work admirably. He has proved himself to be a faithful and efficient officer. No one can say more than I would say for the way that he has discharged his duties, but he has discharged them under an appointment which fixed his salary, and we have no right whatever to give away the money of the State to him for performing those services. I do not believe, sir, that we have any power whatever to do it. I hope, Mr. President, that the Convention will proceed no further in the business of attempting to give away money that does not belong to it. Let us stop here and leave the employes of this Convention upon the basis of their legal rights and not present to the State the spectacle of the Convention framing a Constitution and at the same time overriding it.

Mr. E. A. Brown—Mr. President, I take the gentleman at his word. He says where there was any different and additional service rendered from that which was contemplated at the time of appointment, that such a case was a meritorious one. In the case of Mr. Parkhill, he was appointed an assistant secretary. He was assigned to the duties of financial secretary. He gave a bond of \$25,000. He performed the duties of financial secretary. He has accounted for over \$200,000 of the funds of the Convention.

I am surprised that the gentleman, while I respect his ability and attainments, should sit still all day yesterday when less meritorious applications were made to this house. He remained silent. He did not put the obstacle of his immense power against the granting of extra compensation to other officers; but now, when a most deserving application is made, he rises up and lends his power to a refusal.

Mr. Nicoll—Mr. President, are there any means of ascertaining what the surplus money of this Convention is and whether it has all been divided?

The President—The Chair is unable to give the desired information.

Mr. Dean—Mr. President, I simply desire to congratulate this Convention for its return to the Constitution. After sitting here all day yesterday and granting extra compensation to every officer in the Convention, I see a gentleman rising up here protesting any more violations of the Constitution.

I am glad that he is willing to subscribe to the Constitution.

Mr. Lyon—Mr. President, I want to say that I subscribe to all that Mr. Root has said. I believe that if extra compensation is to be given to any of the assistant secretaries it should be given those at the desk, rather than the financial secretary.

The President—It seems to me that there is no power in the Convention in reference to this matter and that this resolution will be ineffective.

Mr. Spencer—I move to lay the resolution on the table.

Mr. Root—I wish to ask the secretary if it was not true that Mr. Parkhill was appointed as financial secretary?

The secretary —It certainly is true.

Mr. Root—And he has acted as financial secretary.

The President put the question on the motion of Mr. Spencer to lay Mr. Brown's resolution on the table and it was determined in the affirmative.

Mr. Nelson Smith—Mr. President, I have a resolution which I will read: Resolved, That the pages of the Convention be allowed and paid at the rate of three dollars per day from May 22, 1894, and that the Comptroller pay such additional allowance to them respectively.

Mr. Spencer—Mr. President, I move to lay that resolution on the table.

Mr. Smith—Mr. President I wish to be heard. I have not yielded the floor.

The President—Very well, you have the floor.

Mr. Smith—Mr. President we have but ten pages. We have 170 members of the Convention. The assembly is com-

posed of 128 members. The assembly has 25 pages. These pages have served from eight o'clock in the morning until ten at night, a large part of the session since May 22d. That is the date I propose to give them the pay from. Now, all these young men are striving to become delegates and members of assembly and statesmen. They have earned this additional dollar. They get but two dollars per day. Nearly all of them are here away from their homes. They have been here under an expense. If anybody is to be paid, if anybody is to be encouraged by extra pay, I think these boys are entitled to it. They have been attentive and polite. Certainly they are entitled to that pay if anybody is. I am in favor of paying the boys.

Mr. Spencer—I move to lay the resolution on the table.

The President put the question on the motion of Mr. Spencer to lay said resolution on the table, and it was determined in the affirmative.

Mr. Vedder—Mr. President, I move that this Convention take a recess until 12 o'clock noon to-day.

The President—The signing of the Constitution and the resolutions will take place at 12 o'clock.

Mr. Vedder—I give notice that we would like all the delegates of the Convention to meet at once in the Assembly parlor.

The President put the question on Mr. Vedder's motion to take a recess until 12 o'clock noon, and it was determined in the affirmative.

Whereupon the Convention stood in recess until 12 o'clock.

STATE OF NEW YORK.

IN CONVENTION.

RECORD

No. 142.

AFTERNOON SESSION.

Saturday Noon, Sept. 29, 1894.

The Constitutional Convention of the State of New York met in the Assembly chamber at Albany, N. Y., Saturday noon, Sept. 29, 1894.

President Choate called the Convention to order at 12 M.

The President—The signing of the Constitution will now take place in front of the secretary's desk, and I will ask Mr. Deyo to take the chair.

Mr. Deyo assumed the chair.

Mr. Nicoll—Mr. President, I offer the following resolution.

The President pro tem—The secretary will read the resolution.

The secretary read the resolution as follows:

Resolved, That the thanks of this Convention be tendered to the Hon. Joseph H. Choate for the ability, fairness, and courtesy which have distinguished his services as President of this Convention.

The President pro tem put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Durnin—Mr. President, I offer the following resolution.

The President pro tem—The secretary will read the resolution.

The secretary read the resolution as follows:

Resolved, That the thanks of the Convention be tendered to Hon. Thomas G. Alvord and William H. Steele for their efficient services as Vice-Presidents of this Convention.

The President pro tem put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Alvord—Mr. President, I am under great obligation to this Convention and to its presiding officer for that magnificent tribute that he paid to me an hour ago, which was much beyond my deserts, and to the members of this Convention in the honor they have done me now in the passing of the resolution which has just gone through this body. I desire to say, sir, that although I have spent sixty years of a life of eighty-four in the public eye, more than half of that in a position official in its character, I have in that whole time not collected together much of the filthy dross of this world, I have accumulated to myself, I trust and hope, an approbation on the part of the people in my own constituency, who have always responded to my anxiety for public position. I have experienced that kindness and appreciation far beyond what I deserve, which shall be, I think, a priceless treasure to leave to those children who are to come after me.

I thank you, gentlemen, for the honor you have done me, both in the treatment you have accorded me during my whole term in this body and for the resolutions which you have upon this occasion adopted. (Applause.)

Mr. W. H. Steele—Mr. President, the words of commendation in the resolution, coming as they do from the minority of this Convention, are ex-

tremely pleasing to me. I have always through life felt that a certificate attesting to my fairness and impartiality in any capacity was of greater moment to me than one which testified to my ability. This one certifies to both, and being adopted by the Convention, is ample reward for the services which I have been fortunate enough to render the Convention in my capacity as its second vice-president. I am grateful to the Convention for all its kindness and courtesy. (Applause.)

Mr. Blake—Mr. President, I now offer the following resolution.

The President pro tem—The secretary will read the resolution.

The secretary read the resolution, as follows:

Resolved, That the thanks of the Convention be tendered to Charles E. Fitch, secretary, and Edward M. Johnson, assistant secretary, and the several clerks of the Convention, for their able and efficient services, and the very satisfactory manner in which they have discharged the duties of their several offices.

The President pro tem put the question on the adoption of the resolution, and it was determined in the affirmative.

Mr. Choate—Mr. Secretary of State, I now deliver into your charge the revised Constitution of the State of New York, as it has been proposed and adopted by this Constitutional Convention, to be recorded and remain in your office among the archives of the State, and also, accompanying it, I deliver to you the resolutions of this Convention, prescribing the manner in which it shall be submitted to the people and the duties in carrying out the resolutions which you are expected to perform. (Applause.)

Secretary of State Palmer—Mr. President, it was my pleasure to preside over the deliberations of this Convention at its organization. It will be one of the pleasantest memories of my life to think that I have had the honor of having been the Secretary of the great Empire State during the work of this Convention. I will accept, Mr. President, this revised Constitution, and assure you, and the gentlemen of the Convention, that it will be safely deposited in the archives of the great State of New York. (Applause.)

Mr. President Choate resumed the chair.

Mr. McDonough—Mr. President, if there is no further business, I move we do now adjourn.

The President—Gentlemen, before the motion to adjourn is put, it may be proper for me to say a few words to you in the nature of a farewell. It is now nearly five months since we came together and mutually interchanged our oaths to perform with fidelity the duties intrusted to us as delegates to this Convention, and I think we may look back upon that long period of protracted and arduous labor and, without any pride or boastings, with our hands upon our hearts, say that we have faithfully attempted to discharge the duties so assumed. We found great responsibility and difficult duties intrusted to us. We were to decide, in the first place, the great question whether we should devise a new Constitution for the State of New York, or merely repair, enlarge and improve that ancient structure, under which its people had prospered and lived in happiness so long. There could be but one answer to that question. We had only to go over this venerable structure to discover the defects which the ravages of time had made, the improvements and additions which the progress of civilization demanded, and to apply our wisdom, so far as we might, to the work of improvement and repair.

More than four hundred amendments were proposed to it from the teeming brains, not only of the delegates, but from large numbers of citizens, who thought that they could aid in the work. In my judgment, one of the greatest services that we have rendered, one of the greatest claims to the gratitude of the people of the State which we can put forth is, that out of those more than four hundred, we have adopted only thirty-three. We have demonstrated that this, at least, was a conservative Convention, mindful of the value of the experience of the past, of the precious value of the institutions which our fathers had handed down to us.

We found, at the outset, four or five great subjects upon which the public mind had been exercised and in regard to which it seemed necessary that we should apply the improving hand. We have done it to the best of our ability. With one exception, all of these have received the joint support of the delegates, I may say, without regard to political or party consideration.

There was a renovation of our judicial system, the system upon which

the happiness and welfare of the people more nearly depends than upon any other part of the Constitution of the State. We have endeavored to give to the people of the State a judicial system which shall answer their purposes at least for the next twenty years. We believe that if they will take up the judiciary article and examine it, they will find that the object of this Convention has been successfully accomplished, namely: By means of it to bring justice home to the doors of the people throughout the State more completely, more promptly, more efficiently than it has ever been before.

And then there was our common school system, that other foundation of the civilization itself, of which the people of this State will so proudly boast. We have done much for that. We have secured the establishment throughout this State of common schools in which all the children of the State may receive, at the public expense, an adequate education. We have guarded against that danger which had excited so much apprehension within the borders of this commonwealth, that, perhaps, there was already beginning, and likely to continue and to grow, a diversion of money raised by taxation for educational purposes into sectarian hands and control. All that we have successfully, and, as I believe, absolutely accomplished by our educational article.

There was another subject which deeply agitated the minds of the people of this State, and that was, the application of public money in the way of private charity. By many who had not carefully examined the subject, it was believed to be inherently an evil which could only be cured by cutting it out by the roots. We have, through our charities committee, most carefully examined that question, and, I think, we came to the conclusion that the system which the State had deliberately adopted and carefully followed now for more than twenty years, of employing the aid of honest, faithful, devoted private charitable institutions for the care of certain wards of the State, that could not otherwise be as well cared for, ought not to be departed from; but, at the same time, there were abuses incident to the conduct of that mode of charity which at least there should be a stop put to, and we have deprived the Legislature of all compulsory power in the matter. Hereafter, if this Constitution is adopted,

no subordinate division of the State can be compelled, by the central power of the State, to devote a dollar of its money, against its will, to any particular form of charity. Besides that we have secured the regulation of the State Board of Charities to this effect: That wherever any public money is devoted to a private charity for the public service, it shall continue under public control, and the vigilant eye and the strong arm of the people shall be able to follow every dollar of the public money into every institution to which it is so devoted.

There is one subject of vast importance upon which we have not been able in like manner to agree without distinction of political preferences. But this, let me say: That while, as I believe, upon the one side happen to be the majority, the scheme of apportionment has been devised with a pure and patriotic eye for the public good, believing that the best welfare of all the people of this State demanded it. We give credit for equal good faith, equal honesty, equal patriotism to those in this Convention who cannot accept that view, and who believe, in other words, that it is unnecessary, unwise and effective with political and partisan spirit. Gentlemen, upon that subject we have agreed to disagree, and we lay our work before the people separately, and, in my judgment, it was a most magnanimous and generous act on the part of the majority of this body to separate that political question from all the others that are non-political, and to not attempt, as it would not have been right or fair to attempt to say to the voters of this State; If you wish to have these wise and great and useful reforms that this Constitution contains, you could only have them at the price of voting for this apportionment scheme, and, on the other hand, to say to them, you could only have this apportionment scheme by voting for these ten, twenty, thirty constitutional amendments, as to many of which you may have personal and honest objections.

In the remarks which I had the pleasure to address to you on the opening of this Convention, I referred to these subjects as those which were of great, pressing and special importance. Besides these, we have been able to contribute many other wise provisions of reform, which it is no time for me now to enumerate. I believe if they are adopted they will contribute to the welfare of the people of this State,

and it seems to me that it is the duty of the members of this Convention, who have taken such an active, such an ardent, such a patriotic part in framing and passing them, to go their way among the people, explaining, instructing, advocating, these various measures intended for the public good, so that when the sixth day of November comes our people throughout the length and breadth of the State will at least understand our work, and if they like it, they will approve of it.

Gentlemen, I have to thank you for all your kindness and courtesy to me throughout all the trying days of this Convention. I was aware from the beginning to the end of my inadequacy for the duties that you had imposed upon me. The friendships that I have formed in this body will last throughout my life. I thank you for your special kindness manifested an hour ago. It overwhelmed me with emotions of gratitude. And let me, in closing, express the fond hope that all the members of this Convention may look with pride and satisfaction each upon his own labors in this Convention, that it will be to him, to the last moment of his life, a precious honor to have occupied a seat and have his name enrolled upon its list. I trust, gentlemen, you may go away to your various homes and enjoy to the end of your days, peace, prosperity and happiness. (Applause.)

The President—Unless any other business is presented to the Convention it will be the duty of the Chair to pronounce it adjourned sine die.

Mr. Vedder—Has a motion been made, Mr. President, to that effect?

The President—No motion has been made.

Mr. Vedder—I move you then, Mr. President, that this Convention adjourn without day.

The President—Has any gentleman any matter to propose before this motion is put? If not, those in favor of the motion that this Convention be now adjourned without date will manifest it by saying aye, and those opposed will say no.

The motion prevailed and the Convention adjourned sine die.

HERBERT A. BRIGGS,
Official Stenographer, Buffalo, N. Y.

GEORGE H. THORNTON,
Buffalo, N. Y.,

WILLIAM LOEB, Jr.,
Albany, N. Y.,

A. B. WEAVER,
Buffalo, N. Y.,

CHARLES A. MORRISON,
New York,

EDMUND A. DAVIS,
New York,

Assistant Stenographers.

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